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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Working Group on Arbitrary Detention

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Introduction

1. At its forty-seventh session, the Commission on Human Rights adopted resolution 1991/42, entitled "Question of arbitrary detention", in which it decided to create, for a three-year period, a working group composed of five independent experts, with the task of investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned.

2. The Working Group presented its first and second reports (E/CN.4/1992/20 and E/CN.4/1993/24) to the Commission at its forty-eighth and forty-ninth sessions respectively. The first report contained, inter alia, the Working Group's methods of work and the principles applicable in the consideration of cases submitted to it, thus laying down the criteria according to which it proceeded in the consideration and adoption of decisions on individual cases of alleged arbitrary detention. The second report contained, inter alia, the full text of the decisions adopted by the Working Group in 1992, as well as four deliberations providing the Group's views on certain legal situations; statistical data covering the period September 1991 to December 1992, and the Working Group's conclusions and recommendations.

3. At its forty-ninth session, the Commission adopted resolution 1993/36, entitled "Question of arbitrary detention", in which it, inter alia, took note with satisfaction of the Working Group's report (E/CN.4/1993/24) and thanked the experts for the rigour with which they had performed their task, in the light of the very specific nature of their mandate of investigating cases; and requested the Working Group to submit a report to it, at its fiftieth session, and to make all suggestions and recommendations for better fulfilment of its task, particularly in regard to ways and means of ensuring the follow-up to its decisions, in cooperation with Governments.

4. In conformity with paragraph 18 of Commission resolution 1993/36, the Working Group hereby presents its third report to the Commission.

5. Chapter I of the report describes the activities of the Working Group since the submission of its second report to the Commission, including data on the number of communications and cases transmitted by the Working Group to Governments during 1993 and the number of replies received, data on urgent appeals sent and the replies received thereto; contacts made by the Working Group with certain Governments with a view to carrying out field missions, and the results of such contacts; contacts with special rapporteurs of the Commission and contacts with non-governmental organizations. Chapter II sets out the Working Group's views, at the end of the third year of its mandate, regarding the procedure it has followed in the adoption of "deliberations" (the term it used to distinguish between "decisions", which concern individual cases, and decisions on certain legal situations involving questions of principle, which it referred to as "deliberations"). Chapter III of the report describes the general framework in which the Working Group adopted decisions on individual cases submitted to it, and reactions by several Governments to decisions adopted in 1992 and 1993 concerning their countries. Chapter IV contains the Working Group's general conclusions and recommendations.

6. Annex I contains the methods of work of the Working Group, as revised by it at its eighth session. Annex II contains the full text of 54 decisions adopted by the Working Group, including 6 decisions adopted in 1992 which, for technical reasons, were not published in the Working Group's second report to the Commission (E/CN.4/1993/24) and the decisions adopted by the Working Group during its sixth and seventh sessions, in 1993. Annex III contains a decision regarding cases of persons no longer in detention, which the Working Group decided to file since it deemed that there were no special circumstances warranting it to consider the nature of the detention, and the list of those persons. Annex IV contains a list of persons whose release was announced by Governments following the adoption by the Working Group of decisions concerning these persons. Annex V contains statistical data regarding the number of cases dealt with by the Working Group during the period covered by the present report and the breakdown of the types of decision adopted by the Working Group.

I. ACTIVITIES OF THE WORKING GROUP

7. The activities described below refer to the period February to December 1993, when the present report was finalized. During this period the Working Group held three sessions: its sixth, seventh and eighth, from 26 to 30 April, from 27 September to 1 October and from 1 to 10 December 1993, respectively.

A. Communications with Governments

8. During the period under consideration the Working Group transmitted 45 communications containing 183 newly reported individual cases of alleged arbitrary detention to the following Governments (the number of individuals concerned is given in parentheses): Azerbaijan (2), Bahrain (1), China (2 communications totalling 8 cases), Colombia (2 communications totalling 5 cases), Croatia (1), Cuba (1), Djibouti (14), Egypt (2 communications totalling 6 cases), Ethiopia (3 communications totalling 6 cases), Greece (1), Guinea-Bissau (5), Indonesia (2 communications totalling 2 cases), Iraq (1), Kuwait (1), Mexico (2), Morocco (2 communications totalling 3 cases), Niger (7), Nigeria (4), People's Democratic Republic of Korea (3), Peru (2 communications totalling 35 cases), Republic of Korea (1), Saudi Arabia (3 communications totalling 2 cases), Sudan (10), Syrian Arab Republic (3 communications totalling 5 cases), Tunisia (1), Turkey (1), United Kingdom (9 cases concerning Hong Kong), Uzbekistan (2 communications totalling 3 cases), Viet Nam (2 communications totalling 24 cases), Yemen (1), Zaire (2) and Zambia (16).

9. Out of the 31 Governments concerned, 15 provided the Working Group with information regarding the cases transmitted to them. They were the Governments of: China (with respect to one communication concerning one person), Colombia, Croatia, Egypt, Ethiopia, Greece, Iraq, Kuwait, Morocco, Nigeria, Republic of Korea, Syrian Arab Republic, United Kingdom, Viet Nam and Yemen.

10. In respect of communications transmitted prior to the period February-December 1993, the Working Group received replies from the following Governments: Bhutan, Costa Rica, Philippines, Republic of Korea and United States of America.

11. A description of the cases transmitted and the text of the Government's reply are contained in the pertinent decisions adopted by the Working Group.

12. As regards the sources which submitted information on cases of alleged arbitrary detention to the Working Group, it may be noted that of the 45 communications sent by the Working Group to Governments during the period under consideration 6 communications concerning 8 individual cases, were based on information submitted by family members or relatives of the detained persons; 7 communications concerning 65 individual cases were based on information submitted by local or regional non-governmental organizations and 32 communications concerning 110 individual cases were based on information provided by international non-governmental organizations.

B. Urgent appeals

13. During the period under consideration the Working Group resorted more often than in the past, and in a larger variety of situations, to the "urgent action" procedure. Whereas in the entire year 1992 it addressed 12 appeals to Governments, in the first 10 months of 1993 alone it addressed 17 appeals to 14 Governments. Three appeals were addressed to the Government of Cuba, 2 to the Government of Viet Nam and 1 appeal to each of the following Governments: Burundi, China, Djibouti, Indonesia, Kenya, Malawi, Maldives, Mexico, Myanmar (an appeal sent jointly with the Special Rapporteur on the human rights situation in Myanmar), Nigeria, Sierra Leone and Tunisia. Most of the appeals concerned persons who were allegedly detained in an arbitrary manner and regarding whom fears were expressed by the source that their continued detention could constitute a danger to their health or even to their life. In conformity with paragraph 11 (a) of its methods of work, the Working Group, without in any way prejudging its final assessment of whether the detention was arbitrary or not, drew the attention of the Government concerned to the specific case as reported and appealed to it to take the necessary measures to ensure that the detained persons' rights to life and to physical integrity were respected. In some cases, in view of the particularly dangerous health condition in which the detained person was reported to be, the Working Group also appealed to the Government to consider releasing that person. The Governments of China, Cuba, Djibouti, Indonesia, Maldives, Mexico, Nigeria, Tunisia and Viet Nam provided the Working Group with information on the persons concerned. In most of the cases, the replies provided by the Governments affirmed that the persons concerned were in a satisfactory condition and their continued detention constituted no risk to their health. In three of the cases (Cuba, Nigeria and Viet Nam), the Governments informed the Working Group that some of the persons concerned had been released. As is the practice regarding Government replies to communications transmitted to them by the Working Group, replies received from Governments with regard to urgent appeals were also transmitted to the sources for their information. The Working Group wishes to thank those Governments which heeded its appeal to provide it with information on the situation of the persons concerned, and in particular those which released such persons.

C. Field missions

14. In its second report to the Commission (E/CN.4/1993/24) the Working Group expressed its intention to carry out, in the third year of its mandate, the first mission *in situ*, as a means to foster an effective spirit of cooperation between the country visited and the Working Group. Governments must perceive these visits as opportunities to explain their point of view with reference to ground realities. This spirit of cooperation will enable the Group to perform its task with discretion and objectivity. The Commission, in its resolution 1993/36, has also encouraged Governments to consider inviting the Working Group to their countries so as to enable the Group to discharge its mandate even more effectively. It is in this spirit that the Working Group has, in the third year of its mandate, taken initial steps with a view to carrying out its first visits *in situ*.

15. In April 1993 an international non-governmental organization informed the Working Group of the detention, in controversial conditions, of over 200 Haitian asylum-seekers at the United States Naval Base at Guantanamo, Cuba, and suggested that the Working Group carry out a mission to the United States and to the above-mentioned base. The Working Group undertook initial contacts with the Chargé d'affaires of the Permanent Mission of the United States at Geneva with a view to proposing such a visit, and later addressed to him a detailed list of issues which could be clarified during the proposed visit. But on 22 June 1993 the United States Chargé d'affaires informed the Working Group that all the Haitians held in Guantanamo Bay were being brought to the United States, following an order issued by a district court judge in New York. The subject of the proposed visit therefore no longer existed.

16. In September 1993 representatives of the Government of Viet Nam approached the Chairman of the Working Group to discuss the possibility of carrying out a visit to that country. Following further consultations with representatives of that Government a formal invitation was extended to the Working Group during its eighth session, in December 1993. The Working Group decided to respond favourably, and steps are being taken to discuss the dates and the modalities of the visit.

D. Cooperation with other procedures and mechanisms of the Commission on Human Rights

17. It may be recalled that the Vienna Declaration and Programme of Action (A/CONF.157/23, para. 95) affirmed that the procedures and mechanisms (of the Commission on Human Rights and of the Sub-Commission) should be enabled to harmonize and rationalize their work through periodic meetings. A step in that direction was taken by the Working Group at its eighth session, in December 1993, when it held a meeting with the Special Rapporteur on the question of torture in order to exchange views regarding the criteria of admissibility adopted in the discharge of their respective mandates, their methods of work and other matters of concern to both mechanisms.

E. Cooperation with non-governmental organizations

18. During the period under consideration the Working Group continued its cooperation with non-governmental organizations, both international and regional. In addition to being the Working Group's main source of information, non-governmental organizations continued to show interest in the Working Group's activities and methods of work by proposing ways to increase the transparency and efficiency of the Group's work.

19. At its seventh session (September-October 1993) the Working Group received representatives of the American Association of Jurists, at their request. They made several pertinent observations regarding the Working Group's methods of work and expressed reservations about some conclusions reached by the Working Group in several decisions it had adopted (see para. 55 (b) below).

20. At its eighth session (December 1993) the Working Group decided to convene, during the course of 1994, a meeting with the non-governmental organizations which have been providing it with most of the individual cases, as well as general information, in order to discuss ways to enhance the cooperation with the Working Group and, in particular, to examine how non-governmental organizations could assist the Working Group in carrying out the task of taking up cases on its own initiative, in conformity with Commission resolution 1993/36 (para. 4).

II. DELIBERATIONS OF THE WORKING GROUP

21. In its first report to the Commission, the Working Group, in chapter IV, entitled "Special situations receiving the consideration of the Working Group", identified certain legal situations which deserved particular attention. The following situations were identified: (a) failure to take pre-trial detention into account; (b) failure to take detention prior to extradition into account; (c) restricted residence; (d) rehabilitation through labour; (e) extradition not followed by trial; and (f) grave and multiple violations of the right to a fair trial, in connection with the Working Group's category III of principles applicable in the consideration of cases submitted to it. These situations were identified in order to facilitate the future work of the Working Group. As and when the legal situations identified arose, either in the context of an individual's detention or otherwise, the Working Group felt that it would then consider whether these legal situations could characterize a detention as arbitrary. The Working Group deemed that this would make it possible for the Governments concerned to appreciate, not in the abstract but with reference to the identity of the legal situations prevailing in their respective jurisdictions, why detentions in the context of these legal situations were declared arbitrary. In addition, the Working Group felt that consideration of these situations would help formalize certain principles which might hitherto not have been considered relevant for the purposes of declaring a particular detention arbitrary.

22. In its second report to the Commission the Working Group dealt with two of the aforementioned legal situations, i.e. those regarding restricted residence or house arrest (Deliberation 01), and rehabilitation through labour (Deliberation 04). The two other deliberations contained in the report were

adopted in response to specific questions which had been put forward by the Government of Cuba concerning the Working Group's criteria and methods of work. With regard to the other legal situations referred to in the Working Group's first report, the Group decided that it would consider such situations, and adopt deliberations thereon, on the occasion of the examination of individual cases involving such legal questions.

III. DECISIONS ADOPTED BY THE WORKING GROUP AND GOVERNMENT REACTIONS THERETO

A. General information regarding decisions adopted by the Working Group

23. At its sixth session, from 26 to 30 April 1993, the Working Group adopted 30 decisions (Decisions Nos. 1 to 30), concerning 84 persons in 19 countries. At its seventh session, held from 27 September to 1 October 1993, the Working Group adopted 20 decisions (Decisions Nos. 31 to 50) concerning 102 persons in 17 countries. At its eighth session, from 1 to 10 December 1993, the Working Group adopted 17 decisions (Decisions Nos. 51 to 67) concerning 85 persons in 13 countries. The decisions adopted at the Working Group's sixth and seventh sessions, together with 6 decisions adopted by the Group at its fifth session in December 1992 (Decisions 43/1992, 45/1992, 46/1992, 47/1992, 52/1992 and 53/1992 which, for technical reasons, could not be reproduced in the Working Group's second report to the Commission), are reproduced in Annex II, in their order of adoption by the Working Group, or reflected in Annex III.

24. With regard to 39 of the cases considered, the Working Group decided that they should be filed since the persons concerned were no longer in detention and there were no special circumstances, in the Working Group's view, warranting the Group to consider and decide on the nature of their detention. Such cases are listed in annex III to this report. Nevertheless, decisions involving several persons, including persons belonging to the group of released persons mentioned in annex III, are reproduced in full in annex II.

25. In keeping with its view, as expressed in its methods of work (E/CN.4/1993/24, para. 2), that the investigation of cases transmitted to it should be of an adversarial nature, the Working Group transmitted the decisions, as adopted, to the Governments concerned, drawing their attention to resolution 1993/36, in which the Commission, inter alia requested "Governments concerned to pay due heed to the Working Group's decisions and, where necessary, to take appropriate steps and inform the Working Group, within a reasonable period of time, of the follow-up to the Group's recommendations so that it can report thereon to the Commission". In the same spirit, the Working Group also transmitted relevant excerpts of the decisions to the sources from which the original communications were received, three weeks after the transmittal of the decisions to the Governments concerned.

B. Replies to decisions adopted in 1992

26. Following the transmittal of the Working Group's 54 decisions adopted in 1992 to the Governments concerned, 7 Governments addressed to the Working Group replies regarding the cases subject to decisions. These figures should however be seen in the light of the fact that the Group's first 54 decisions

concerned 24 Governments, out of which in one case (Peru) the detention was declared not arbitrary, and in five other cases (Mexico, Uganda, Chile, Côte d'Ivoire and United Republic of Tanzania) all the persons concerned had been released and the Working Group did not consider the nature of their detention. In these circumstances only the following 18 Governments were asked by the Working Group to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the relevant international instruments: Burundi, Cuba, Egypt, Ethiopia, Islamic Republic of Iran, Israel, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Malawi, Malaysia, Morocco, Myanmar, Republic of Korea, Saudi Arabia, the Sudan, Syrian Arab Republic, Tunisia and Turkey. Of these 18 Governments, 7, those of Burundi, Ethiopia, Lao People's Democratic Republic, Malawi, Malaysia, the Sudan and Tunisia, sent replies to the Working Group.

C. Replies to decisions adopted in 1993

27. The 30 decisions adopted at the Working Group's sixth session in April 1993 concerned 18 countries, out of which in 3 cases (Tunisia, Cameroon and the Federal Republic of Yugoslavia) all the persons concerned had been released and the Working Group did not consider the nature of their detention. The Working Group made recommendations with regard to the following 15 Governments: Cuba, Dominican Republic, Ethiopia, Haiti, Israel, Indonesia, Libyan Arab Jamahiriya, Malawi, Morocco, Nigeria, Philippines, Republic of Korea, Syrian Arab Republic, Turkey and Viet Nam. Out of the 15 Governments, the following 8 addressed replies to the Working Group regarding the cases subject to decisions: Malawi, Morocco, Nigeria, Philippines, the Republic of Korea, the Syrian Arab Republic, Turkey and Viet Nam.

28. The Governments of Morocco, Peru and Saudi Arabia addressed replies to the Working Group with regard to decisions adopted by it at its seventh session (September 1993).

D. Governments' reactions to decisions

29. Governments' reactions to decisions concerning them may be divided into three categories:

(a) Governments informing the Working Group that persons concerned by its decision are no longer in detention. The following Governments provided the Working Group with such information: Ethiopia, Lao People's Democratic Republic, Malawi, Morocco, Nigeria, Philippines, the Sudan and Viet Nam. (For the names of the persons released and the number of the decision concerning them, see annex IV). The Working Group considers that the release of persons whose detention was declared by it to be arbitrary can be seen as a step in the direction recommended by the Group towards remedying the situation and bringing it into conformity with the norms and principles incorporated in the relevant international instruments. The Working Group further deems that such releases can be seen as conforming with the request contained in

to pay due heed to the Working Group's decisions and, where necessary, to take appropriate steps and inform the Working Group, within a reasonable period of time, of the follow-up to the Group's recommendation. The Working Group therefore wishes to express its thanks to the above-mentioned Governments and to encourage other Governments concerned to take similar measures.

(b) Governments which, having received the cases transmitted by the Working Group, provided information to the Working Group within the 90-day deadline indicated and which, following the adoption of the decision concerning them, supplied further information challenging the Working Group's arguments, findings or conclusions. Such was the case of the Government of Turkey, with regard to decision No. 9/1993, and the Government of Tunisia, which, in reaction to Decision No. 51/1992 provided the Working Group with detailed information regarding the competence of military tribunals, the existence of domestic remedies to appeal the decisions of military tribunals and the interpretation of article 19 of the International Covenant on Civil and Political Rights.

(c) Governments which, having received the cases transmitted by the Working Group, did not provide any information within the 90-day deadline, but which, following the adoption of the decision concerning them, supplied pertinent information on the cases which were the object of the decision. The following Governments provided such information: Malawi (with regard to Decision No. 13/1993), Burundi (Decision No. 48/1992), Lao People's Democratic Republic (Decision No. 2/1992), Malaysia (Decision No. 39/1992), Peru (Decision No. 42/1993), the Republic of Korea (Decision No. 28/1992), the Syrian Arab Republic (Decisions Nos. 10/1993 and 35/1993) and Viet Nam (Decision No. 15/1993). In addition to the aforementioned, the Government of Saudi Arabia provided the Working Group with a reaction (to Decision No. 37/1993) despite the fact that the Working Group decided to file the case since the person concerned was no longer in detention.

30. The Working Group takes note with appreciation of any information provided to it by Governments concerned. However, it wishes to encourage all Governments to take heed of the deadline indicated by the Working Group and provide it with a reply within that deadline, so that the Working Group, when it adopts a decision, may have at its disposal not only the version of facts as alleged by the source, but also the Government's version.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. General conclusions

31. In response to various concerns of the Commission, the Working Group has considered it necessary to refer in this its third report to all the resolutions adopted at the forty-ninth session that have a direct or indirect bearing on its mandate. Similarly, in different sections below the Group will discuss its revised methods of work, the possibility of field missions and the Group's general concerns.

1. Response to concerns of the Commission

32. Many Commission
groups in general, and on this Working Group in particular, to give "special attention" to the matters contained in the resolutions mentioned below.

Resolution 1993/41, on human rights in the administration of justice

33. In the Working Group's view, this question is closely connected with its own mandate, as shown in particular by the consideration of all the cases of detention referred to in "category III" of the Principles applicable in the consideration of cases submitted to the Group (first report (E/CN.4/1992/20, annex I)), which relate to guarantees of due process and an impartial trial. In the decisions adopted during the period under review, it was found in 82 cases that detention was arbitrary because of non-observance of these provisions.

34. Also in relation to this question, the Working Group once again draws the Commission's attention to the operation of special courts or military courts. As to the former category, it has found in some of its decisions cases involving "revolutionary" or "people's" courts. The impression gained from these cases is that they are courts based on an ideology which is customarily incompatible with the guarantees provided for in the international provisions to which the Group, in the discharge of its mandate, is compelled to refer.

35. As to the second category, "military courts", the Working Group shares the view of the Human Rights Committee that the provisions of article 14 of the International Covenant on Civil and Political Rights apply to all kinds of courts, whether ordinary or emergency courts. Undoubtedly, the Covenant does not prohibit military courts, even when they try civilians, but conditions reveal no less clearly that trials of civilians by such courts must be exceptional and must be held under conditions of full respect for all the guarantees set out in article 14. In this very connection, the Commission on Human Rights, in resolution 1993/69, called on the Government of Equatorial Guinea to put an end to the use of military courts to try ordinary law offences. The Working Group shares the view of both the Commission and the Human Rights Committee and therefore considers that, in terms of principles, the name given to a special court is less important than whether or not it meets the requirements of article 14 of the Covenant. In the light of its experience, the Group notes that in almost all cases military courts involve serious risks of arbitrariness, on the one hand because of the procedure applicable and on the other because of the corporative nature of their membership, and all too often they give the impression that a double standard is being applied, depending on whether the person being tried is a civilian or a member of the military.

36. In paragraph 43 (c) of its second report (E/CN.4/1993/24), the Working Group recommended the strengthening of the institution of habeas corpus, which, as experience shows, is indispensable in a State governed by the rule of law as a safeguard against arbitrary detention. The Commission endorsed this suggestion (resolution 1993/36, para. 16). The Group regrets that in many countries habeas corpus actions do not exist or have been suspended or are not readily available or relied on very little, since the sources very rarely indicate that this remedy has been applied for, although this step is required in the Working Group's principles for the submission of cases.

Resolution 1993/45, on the right to freedom of opinion and expression

37. This resolution is in keeping with the contents of paragraph 14 of resolution 1993/36. In its second report, the Working Group had already expressed a similar concern and it may be noted that 38 of the decisions adopted, concerning 147 persons, relate to detentions regarded as arbitrary because they were ordered as a result of lawful exercise of the right to the freedom provided for in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. Unfortunately, because of the very short period since the establishment of the mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression referred to in paragraph 11 of resolution 1993/45, it has not been possible to coordinate with him more effectively.

Resolution 1993/46, on integrating the rights of women into the human rights mechanisms of the United Nations

38. Pursuant to this resolution, and to the provisions of paragraph 10 of resolution 1993/47, the statistics for this year show cases of arbitrary detention in which the victims were women. If the Commission decides to appoint a special rapporteur on violence against women, as envisaged in paragraph 6 of resolution 1993/46, the Group hopes to be able to cooperate with him or her in the most effective way.

Resolution 1993/47, on human rights and thematic procedures

39. This resolution covers various matters of interest, many of them dealt with in various paragraphs of this report, and in particular the following:

(a) List of recommendations. The Group considers that the complete annual list of general recommendations which the resolution requests from the Secretary-General should, as far as the Working Group is concerned, include the principles applicable in the consideration of cases submitted to the Working Group and its revised methods of work;

(b) Follow-up to recommendations. Paragraph 5 of resolution 1993/47 reveals the Commission's concern about the follow-up by Governments to the recommendations contained in the decisions of the Special Rapporteur or the Working Group, something which is a subject of a special recommendation in paragraph 10 of resolution 1993/36. This is the concern that also prompted the Working Group to suggest the consideration in 1993 of "improved methods of work by means of continued cooperation with Governments, so as to ensure follow-up to the recommendations made in the Group's decisions" (E/CN.4/1993/24, para. 42 (b)). For this reason, and in view of the Commission's requests in resolutions 1993/36 and 1993/47, the Working Group, through its Chairman/Rapporteur, will engage in appropriate consultations so as to suggest to the Commission at its next session, in the form of a "deliberation", a follow-up mechanism for its decisions.

Resolution 1993/48, on the consequences for the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population and by drug traffickers

40. The Commission requests special rapporteurs and working groups to continue to pay particular attention in their reports to these negative consequences. The Working Group is, of course, particularly concerned about the adverse effect that the activity of the criminal groups in question has on the effective enjoyment of human rights. Their actions especially affect the rights to life, security of person, freedom of association and assembly, freedom of opinion and expression, and even freedom of conscience. Moreover, justified fear of their actions has caused thousands of persons to go into exile, thus affecting their right to live in their own country. Of course, personal freedom is also affected, since hundreds of people are being kidnapped. The Working Group's mandate is, however, limited to cases of "detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned" (resolution 1991/42). With regard to the content of this mandate, the Working Group adopted its Deliberations 02 and 03, which are contained in chapter II of its second report (E/CN.4/1993/24) and clearly show that the term "detention" refers to an act of the State which deprives a person of his freedom.

41. However, when acts depriving persons of their freedom are carried out by non-State or even private organized movements which use armed struggle in their political action, chiefly in circumstances governed by international humanitarian law, the Group will need to look into an appropriate procedure. But in the present state of its thinking, the Group considers that the mandate relates solely to detentions ordered or practised by the State.

Resolution 1993/63, on the situation of human rights in Cuba,
resolution 1993/97, on the situation in East Timor, and
resolution 1993/61, on the situation of human rights in Zaire

42. As in previous years, the Working Group has endeavoured to maintain contacts with all the rapporteurs and experts, as well as with the Secretary-General, in connection with the cases on which they have to report to the Commission on the human rights situation in the countries within their mandates. In the relevant cases the Group has considered the background information available to the experts and rapporteurs and taken it into account in its decisions.

Resolution 1993/64, on cooperation with representatives of United Nations human rights bodies

43. This resolution deals specifically with the protection of persons who have lodged complaints with, availed of themselves of the procedures of, cooperated with or provided testimony to any body in the system. The Working Group has paid special attention to this resolution, to which it attaches the greatest importance. However, it has not received any reports of reprisals against persons complaining to the Group of their situation.

Resolution 1993/70, on human rights and mass exoduses

44. The proliferation of mass, unjust, and mainly, prolonged detentions, under inhuman and unsanitary prison conditions, is naturally a cause of mass exoduses. The Working Group endorses the view of the Commission when it said that human rights violations are one of the multiple and complex factors causing mass exoduses of refugees and displaced persons, recalled that the General Assembly strongly deplores ethnic and other forms of intolerance as one of the major causes of forced migratory movements and urged States to take all necessary steps to ensure respect for human rights, especially the rights of persons belonging to minorities. In this regard, the Working Group has learned over the past year of two situations that could be considered as falling within the framework of resolution 1993/70, namely the situation of Haitian asylum seekers being held at the United States Naval Base in Guantanamo, Cuba, (case mentioned in para. 15), already resolved by the Government of the United States of America, which informed the Group that all the persons had been released and the camp had been done away with; and also the situation of Vietnamese asylum seekers held in Hong Kong, on which the Group is to take a decision at its next session.

Resolution 1993/81, on the plight of street children

45. The Group cannot but stress its full support for the assumptions on which this resolution is based, since this is one of the most serious human rights problems at the present time. Nevertheless, and perhaps because the Working Group usually deals only with cases of prolonged detention, which is not normally the case with street children, no situations of this kind have been submitted to it.

Resolution 1993/87 (I), on advisory services and the Voluntary Fund for Technical Cooperation in the Field of Human Rights

46. In this resolution the Commission requested the Working Group to include in its recommendations, whenever appropriate, proposals for specific projects to be realized under the programme of advisory services. In accordance with this request, the Working Group is at the disposal of the Centre for Human Rights in cooperating with the heads of the advisory services, more especially in proposing projects after case studies or field missions or participating in missions initiated by the Centre.

2. Revised methods of work

47. In its report to the Commission at its forty-ninth session (E/CN.4/1993/24) the Working Group expressed regret that, according to its interpretation, it was not empowered to act on its own initiative in cases of detention it might regard as arbitrary (paras. 28 and 29). It was therefore a matter of particular satisfaction to the Working Group that the Commission, in paragraph 4 of resolution 1993/36, considered "that the Working Group, within the framework of its mandate, and aiming still at objectivity, could take up cases on its own initiative".

48. On the basis of this provision, the Working Group revised its methods of work, thereby also fulfilling the request contained in paragraph 5 of resolution 1993/36, and it incorporated in the text appearing as annex IV to the report contained in document E/CN.4/1993/24, the following paragraph:

> "17. In accordance with the provisions of paragraph 4 of resolution 1993/36, the Working Group may, on its own initiative, take up cases which, in the opinion of any one of its members, might constitute arbitrary detention. If the Group is in session, the decision to communicate the case to the Government concerned shall be taken at that session. Outside the session, the Chairman, or in his absence, the Vice-Chairman, may decide on transmittal of the case to the Government, provided at least three members of the Group so agree. When acting on its own initiative, the Working Group shall give preferential consideration to the thematic or geographical subjects to which the Commission on Human Rights has requested it to pay special attention."

49. In order to carry out the request contained in paragraph 9 of resolution 1993/47, moreover, the following paragraph has been added in connection with the methods of work:

> "18. The Working Group shall also communicate any decision it adopts to the Commission on Human Rights body, whether thematic or country-oriented, or to the body established by the appropriate treaty, for the purpose of proper coordination between all organs of the system." (See complete text of the methods of work, revised in December 1993, in annex I).

3. Missions

50. In resolution 1993/47, mentioned earlier, the Commission encourages Governments to invite special rapporteurs and working groups to visit their countries and to cooperate with them in their work. In resolution 1993/36, the Commission

> "Encourages Governments to consider inviting the Working Group to their countries so as to enable the Group to discharge its protection mandate even more effectively and also to make concrete recommendations concerning the promotion of human rights, in the spirit of the advisory or technical assistance services, that may be of help to the countries concerned."

In this regard, in its report to the Commission at its forty-ninth session the Working Group said that one of the considerations for 1993 was to carry out the first mission in situ (para. 42 (c)). Consultations are now being held with two countries, Viet Nam and China, to programme a mission consonant with its mandate (with regard to Viet Nam, see para. 16). In respect of China, the Working Group has considered several cases of alleged arbitrary detention which were reported to have occurred in that country. The decisions in respect thereof have not yet been communicated to the Government of China as the Group is of the opinion that, consistent with the spirit of cooperation in its functioning, it would be of immense value if the Government agreed to its request for a visit in order to understand better the concerns and viewpoint of China. Pursuant to contacts made by the Working Group, the Government has not yet indicated to the Group whether it intends to grant its request. The Group hopes that the Government of China will respond favourably, by the end of February 1994, failing which the Group would forthwith communicate its decisions to the Government.

51. As to resolution 1993/97, on the situation in East Timor, it should be noted that the Group regrets that so far it has not been invited to visit East Timor, but sincerely hopes that, consistent with the wish expressed by the Commission, and with its support, the Government of Indonesia will respond constructively.

4. General concerns of the Group

52. In the light of its experience, the Group's intention has been to contribute to the United Nations' constantly reiterated purpose of promoting and protecting the basic rights of all human beings. Arbitrary detentions are a permanent feature of all regimes, although more frequent and more serious in regimes of a repressive type. The Working Group thus considers that the lengthy process of concern by the Commission and by the Sub-Commission on Prevention of Discrimination and Protection of Minorities about arbitrary deprivations of freedom, which began in 1985 and led to the establishment of the Working Group and the formulation of its mandate in 1991, has been fully justified and that the reasons taken into account at that time are still fully valid.

53. The Group's mandate is of a special nature that calls for a thorough understanding by the Group of the relevant parts of all the national legislations applicable. In the Group's view the difficulties that have emerged have been solved.

54. The Group believes that its suggestion that consideration should be given in 1993 to better control over the flow and range of cases submitted for a decision, as well as an examination of the general trend in the use of arbitrary detention, has, so far as possible, largely been followed. During the year, 181 new cases have been submitted and, with the 162 cases on which a decision is pending, the total is 343. Of these, 269 have been the subject of a decision.

55. The Group has sought to comply with its mandate with discretion, objectivity and independence. The requirements of discretion and of independence have not been challenged. The Group's objectivity has been challenged on only two occasions, which cancel each other out because they are contradictory:

(a) In reply to a concern expressed by the Government of Cuba, the Group maintained in section C of "Deliberation 03" that failure to reply "does not ... imply a priori any presumption as to the veracity of the allegation made" if the Government has not cooperated;

(b) The American Association of Jurists, which the Group had the pleasure of hearing at its seventh session, stated that the Group adopted a presumption in favour of the State if the State cooperated with it, quoting five decisions which appeared in the Group's report on its second year of work. An analysis of those decisions shows that the Group did not presume that the Government's information was true; it decided on the only evidence available. The Group neither rewards a State which cooperates with the presumption of veracity nor punishes a Government that does not cooperate with a presumption of the veracity of the source's allegation. It decides only on the merits of the available evidence. With regard to 1993, the Working Group declared that the detention to be arbitrary in 88 cases, despite the fact that the Government had cooperated.

56. The Working Group welcomes the functional benefit of being able to use the adversarial procedure in taking its decisions. Nevertheless, it wishes to point to some of the difficulties that occur in receiving information from sources and in replies from Governments. The difficulties are as follows:

(a) With regard to information from sources:

Supply of insufficient and inadequate information;

Supply of information on cases that do not fall within the Group's mandate;

(b) With regard to replies from Governments:

Attempts not to cooperate with the Group;

Governments which have supplied information only after the Group has adopted a decision;

Incomplete and insufficient replies in regard to the allegations made by the source.

57. The Group notes with concern that in approximately half of the cases, Governments did not answer the communication forwarded to them, and a large number supplied incomplete information, after the established time-limit.

58. Furthermore, the Group welcomes the cooperation shown by certain Governments, not only in responding within the prescribed time-limit but also in supplying the Group with the most comprehensive information possible on cases communicated to them.

59. As to the supply of incomplete and insufficient information by sources, the receipt in recent instances of more complete information has reversed this trend, but it is essential for sources to realize that the Working Group must always remain within the terms of its mandate. The Group cannot act as a court of appeal and weigh up the evidence yet again. Only in cases in which the detention has no legal grounds (category I), in which the deprivation of freedom concerns the exercise of certain protected rights and freedoms (category II), or in which there has been a manifest violation of the guarantees contained in the international provisions relating to a fair trial (category III), and only in such cases, can the Group declare the deprivation of freedom to be arbitrary.

60. The Working Group must once more express regret at the abuse by many Governments of constitutional states of emergency. According to the report of the Special Rapporteur on the subject, in November 1993, there were declared states of emergency in 29 countries, in either all or part of their territory, and this already a feature pointed out in the Rapporteur's report on the previous year. The Group notes that a number of Governments make frequent use of states of emergency, the consequence being to diminish the normal guarantees that safeguard regular procedures, and thus seriously affect the freedom of the individual, since - on the pretext of remedying the situations invoked to declare the emergency - opposition political leaders, human rights activists, trade unionists and leaders of ethnic, religious, national or linguistic minorities are the first to be detained, often without any right to habeas corpus or with their procedural rights curtailed when they are tried for alleged crimes by courts set up under the emergency regime. The Working Group once again draws the Commission's attention to this type of abuse and, as it did last year, cites as an example of this kind of procedure the Government of Myanmar and the victim of such a situation, the well-known prisoner of conscience Aung San Sui Kyi.

61. As pointed out by the Special Rapporteur on the question of states of emergency in paragraph 14 of his report (E/CN.4/Sub.2/1993/23), there are other countries in which states of emergency have not been declared and which have and apply ordinary legislation empowering the Executive to adopt emergency measures, such as administrative detention for long periods, without the need for official proclamation of a state of emergency in order to do so. The Group has learned of cases in which "national security" decrees and other legal rules allowing for arrest with no subsequent criminal trial are invoked. These rules are a source of arbitrary detentions in which the person concerned is not entitled to due process, and this directly affects persons who have simply exercised rights recognized in international human rights treaties.

62. In 1993, as in previous years, the Group noted with concern that the cases declared arbitrary included a large number involving persons who had been deprived of their freedom for some years. Such cases were found in the following countries: Philippines (5 and 6 years, Decisions Nos. 5/1993 and 27/1993); Syrian Arab Republic (6 years and 23 years, Decisions Nos. 11/1993 and 35/1993); Libyan Arab Jamahirya (11 years, Decision No. 24/1993); Republic of Korea (6 years and 8 years, Decision No. 28/1993); Yemen (10 years, Decision No. 51/1993); Ethiopia (5 years, Decision No. 55/1993); Egypt (5 years, Decision No. 61/1993). The three latter decisions will be reproduced in the Working Group's next report.

63. Last year, the Group expressed its concern about offences which are described in vague terms. This is, in the Group's view, a violation of article 10 of the Universal Declaration and article 15 of the International Covenant on Civil and Political Rights and seriously affects something that is essential to the right to justice. Again, it has been found that widespread use is made of "treason" (with the psychological connotation of rejection to which this offence gives rise in the mind of the public, particularly in regimes which describe themselves as "nationalist") for acts that are completely unrelated to the conventional concept of acts characterized as treason. In another country, "collaboration with the enemy" was used to

punish a medical orderly who attended to both nationals and foreigners at a public hospital during the Gulf War, thereby performing his duties as he should.

64. The Commission invited the Working Group "to take a position in its next report on the issue of admissibility of cases submitted to the Working Group when they are under consideration by other bodies" (resolution 1993/36, para. 7), the implicit reference being to the principle of non bis in idem, whereby there cannot be two jurisdictions for the same case at one and the same time.

65. In addition, account should be taken of the specific nature of the Group's mandate compared with the mandator of other working groups or special rapporteurs asked for information on human rights issues, depending on the topic involved. This does not happen with the Working Group on Arbitrary Detention, which is called on to report on "cases" of arbitrarily imposed detention. Accordingly, the three essential factors of identical persons, subject-matter and case, which could lead to conflicting decisions, do not apply.

66. Consequently, to meet the Commission's concerns, the Working Group considers that a distinction should be drawn between two categories of situations, depending on whether the body seized of the matter deals either with developments in the human rights situation or with individual cases of violations alleged by persons.

67. When the other body seized falls within the first category (working groups, special rapporteurs or representatives, independent experts, whether country-oriented or thematic), the non bis in idem principle does not apply.

68. When, on the other hand, the other body seized falls within the second category (Human Rights Committee in the context of the First Optional Protocol to the International Covenant on Civil and Political Rights, on the one hand, the confidential procedure under Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, on the other), the non bis in idem principle could apply.

69. To find an agreed solution, the Working Group, for the purposes of proper coordination, sent a copy of this comment to the Chairman of the Human Rights Committee and the Chairman of the Commission's Working Group on the confidential procedure, so as to be in a position to formulate a "deliberation" on the question as a whole at the Group's next session.

70. Meanwhile, the Group has requested the secretariat to verify, on receipt of each communication, whether it involves a country that is a party to the Optional Protocol and, if so, to ask the source to specify whether it wishes to submit the matter to the Committee or to the Working Group.

B. Recommendations

71. The Working Group reiterates the recommendations formulated in its previous report (E/CN.4/1993/24), since all of them are still completely valid. Comprehensive and timely information from sources and Governments is,

without any doubt, the main factor in the success of the Group's work and should lead to an improvement in levels of respect for fundamental rights and, in particular, personal freedom.

72. The Working Group also appeals to all Governments which maintain states of emergency for long periods, often without respecting the requirements of article 4 of the International Covenant on Civil and Political Rights, to limit their use to cases warranted by the seriousness and the emergency character of the situation. In no event may an arrest based on emergency legislation last indefinitely, and it is particularly important that measures adopted in states of emergency should be strictly commensurate with the extent of the danger invoked. At the same time, the Working Group encourages Governments to derogate from legal rules contained in ordinary legislation which, in actual fact, present the characteristics of states of emergency, in violation of the international human rights standards.

73. Criminal law requires precision, so that the conduct which is wrongful can be clearly understood by the persons held to be liable. Vague descriptions - about which the Group expressed its concern last year - are sources of abuse and encourage arbitrariness.

74. The Working Group considers, after three years' experience, that habeas corpus is one of the most effective means to combat the practice of arbitrary detention. As such, it should be regarded not as a mere element in the right to a fair trial but, in a country governed by the rule of law, as a personal right which cannot be derogated from even in a state of emergency.

75. Accordingly, the Working Group recommends that the Commission on Human Rights should support the efforts of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in this field (see document E/CN.4/1994/2-E/CN.4/Sub.2/1993/45, resolution 1993/26, para. 3) to elaborate a declaration on habeas corpus with a view to arriving at an additional protocol to the International Covenant on Civil and Political Rights. Furthermore, the advisory programmes for Governments should give habeas corpus priority consideration, so that everyone knows that, in the event of detention, there is a speedy, informal and effective judicial remedy available.

76. In the light of what is said in paragraph 62 above, the Working Group recommends that the Commission should take appropriate measures for Governments to release promptly the persons whose detention has been declared arbitrary.

77. The Working Group once again expresses concern about the shortcomings of the secretariat owing to the lack of material and financial resources. The skilled work of the staff and its commitment to the cause of human rights and to the United Nations have made it possible to mitigate some of the enormous problems that have arisen. In this regard, the Working Group regrets that, at the seventh and eighth sessions, meetings had to be cancelled because of the lack of interpretation services. The World Conference on Human Rights made a special appeal to the Organization to make up for the lack of funds. The Working Group joins in that appeal, since it is of the opinion that the cause of human rights justifies any efforts necessary.

Annex I

REVISED METHODS OF WORK AS OF DECEMBER 1993

1. The methods of work are largely based on those applied, in the light of 11 years' experience, by the Working Group on Enforced or Involuntary Disappearances, with due regard for the specific features of the Group's terms of reference under Commission on Human Rights resolution 1991/42, whereby it has the duty of informing the Commission by means of a comprehensive report (para. 5), but also of "investigating cases" (para. 2).

2. The Group takes the view that such investigation should be of an adversarial nature so as to assist it in obtaining the cooperation of the State concerned by the case considered.

3. In the opinion of the Working Group, situations of arbitrary detention, in the sense of paragraph 2 of resolution 1991/42, are those described in accordance with the principles set out in annex I of document E/CN.4/1992/20.

4. In the light of resolution 1991/42, the Working Group shall deem admissible communications received from the concerned individuals themselves or their families. Such communications may also be transmitted to the Working Group by representatives of the above-mentioned individuals as well as by Governments and intergovernmental and non-governmental organizations.

5. The communications must be submitted in writing and addressed to the secretariat giving the family name, first name and address of the sender, and (optionally) his telephone, telex and telefax numbers.

6. As far as possible, each case shall form the subject of a specific presentation indicating family name, first name and any other information making it possible to identify the person detained and all elements clarifying the legal status of the person concerned, particularly:

(a) The date, place and the forces presumed to have carried out the arrest or detention together with all other information shedding light on the circumstances in which the person was arrested or detained;

(b) The reasons given by the authorities for the arrest or detention or the offences;

(c) The relevant legislation applied to the case in point;

(d) The internal steps taken, including domestic remedies, especially approaches to the administrative and legal authorities, particularly for verification of the detention and, as appropriate, their results or the reasons why such steps were ineffective or were not taken; and

(e) A short account of the reasons why the deprivation of liberty is regarded as arbitrary.

7. In order to facilitate the Group's work, it is hoped that communications will be submitted taking into account the model questionnaire.

8. Failure to comply with all formalities set forth in paragraphs 6 and 7 shall not directly or indirectly result in the inadmissibility of the communication.

9. The cases notified shall be brought to the attention of the Government concerned by the Chairman of the Group or, if he is not available, by the Vice-Chairman, by means of a letter transmitted through the Permanent Representative to the United Nations asking the Government to reply after having carried out the appropriate inquiries so as to provide the Group with the fullest possible information.

10. The communication shall be transmitted with an indication of the deadline established for receipt of a reply. The deadline may not exceed 90 days. If the reply has not been received by the time the deadline is reached, the Working Group may, on the basis of all data compiled, take a decision.

11. The procedure known as "urgent action" may be resorted to:

(a) In cases in which there are sufficiently reliable allegations that a person is being detained arbitrarily and that the continuation of the detention constitutes a serious danger to that person's health or even life. In such cases, between the sessions of the Working Group, the Working Group authorizes its Chairman or, in his absence, the Vice-Chairman, to transmit the communication by the most rapid means to the Minister for Foreign Affairs of the country concerned, stating that this urgent action in no way prejudges the Working Group's final assessment of whether the detention is arbitrary or not;

(b) In other cases, where the detention may not constitute a danger to a person's health or life, but where the particular circumstances of the situation warrant urgent action. In such cases, between the sessions of the Working Group, the Chairman or the Vice-Chairman, in consultation with two other members of the Working Group, may also decide to transmit the communication by the most rapid means to the Minister for Foreign Affairs of the country concerned.

However, during sessions, it devolves on the Working Group to take a decision whether to resort to the urgent action procedure.

12. Between the sessions of the Working Group, the Chairman may, either personally or by delegating any of the members of the Group, request an interview with the Permanent Representative to the United Nations of the country in question in order to facilitate mutual cooperation.

13. Any information supplied by the Government concerned on specific cases shall be transmitted to the sources from which the communications were received, with a request for comments on the subject or additional information.

14. In the light of the information examined during its investigation, the Working Group shall take one of the following decisions:

(a) If the person has been released, for whatever reason, since the Working Group took up the case, the case is filed; nevertheless, the Working Group reserves the right to decide, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;

(b) If the Working Group determines that it is established that the case is not one of arbitrary detention, the case is also filed;

(c) If the Working Group decides that it does not have enough information to take a decision, the case remains pending for further information;

(d) If the Working Group decides that it does not have enough information to keep the case pending, the case may be filed without further action;

(e) If the Working Group decides that the arbitrary nature of the detention is established, it shall make recommendations to the Government concerned. The recommendations shall also be brought to the attention of the Commission on Human Rights in the annual report of the Working Group to the Commission.

15. When the case under consideration concerns a country of which one of the members of the Working Group is a national, that member shall not, in principle, participate in the discussion because of the possibility of a conflict of interest.

16. The Working Group will not deal with situations of international armed conflict in so far as they are covered by the Geneva Conventions of 12 August 1949 and their Additional Protocols, particularly when the International Committee of the Red Cross (ICRC) has competence.

17. In accordance with the provisions of paragraph 4 of resolution 1993/36, the Working Group may, on its own initiative, take up cases which, in the opinion of any one of its members, might constitute arbitrary detention. If the Group is in session, the decision to communicate the case to the Government concerned shall be taken at that session. Outside the session, the Chairman, or in his absence the Vice-Chairman, may decide on transmittal of the case to the Government, provided at least three members of the Group so agree. When acting on its own initiative, the Working Group shall give preferential consideration to the thematic or geographical subjects to which the Commission on Human Rights has requested it to pay special attention.

18. The Working Group shall also communicate any decision it adopts to the Commission on Human Rights body, whether thematic or country-oriented, or to the body set up by the appropriate treaty for the purpose of proper coordination between all organs of the system.

ANNEX II

Decisions adopted by the Working Group

DECISION No. 43/1992 (TURKEY)

Communication addressed to the Government of Turkey on 6 December 1991.

Concerning: Murat Demir and Bedii Yaracci, on the one hand, and the Republic of Turkey, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question.

3. With a view to taking a decision the Working Group considers if the cases in question fall into one or more of the following three categories:

I. Cases in which the deprivation of freedom is arbitrary, as it manifestly cannot be linked to any legal basis (such as continued detention beyond the execution of the sentence or despite an amnesty act, etc.); or

II. Cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of the rights and freedoms protected by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights; or

III. Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Turkey. The Group has forwarded the Government's reply to the party making the allegations but to date has not received any comments from it. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. The Working Group considers that:

(a) It has been alleged that the lawyers Murat Demir and Bedii Yaracii were detained by police agents at Ankara in Turkey, on 13 and 12 June 1991 respectively, being accused of acts covered by the "Anti-Terrorist" Act

No. 3713. They have allegedly been accused of belonging to a political organization known as the "Devrimci-Sol", an illegal opposition organization. It is asserted that they have been refused the right to receive visits from their family members or lawyers.

(b) According to the allegation, there has been a violation of the rights set forth in articles 9, 10 and 20 of the Universal Declaration of Human Rights, 9, 19 and 21 of the International Covenant on Civil and Political Rights, and principles 2, 4, 11, 17, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

(c) The Government in question has stated that the above-mentioned persons have been detained since 13 June 1991 for having worked for the Dev-Sol terrorist organization, a decision reached by the Ankara Security Court on 28 June 1991. The Government does not say whether the decision handed down by the Court is a final sentence or a provisional detention measure; nor does it indicate the facts which make it necessary to regard the Dev-Sol group as a terrorist organization.

(d) The Turkish Act on terrorist activities contains provisions which do not require actual deeds of violence aimed at terrorizing the population, but include criminal offences consisting of expressions of opinion.

(e) Furthermore, the Government in question has failed to provide any information which could make it possible to maintain that the detainees have participated in genuine terrorist acts for which they could be tried. On the contrary, the above facts show that, apparently, they have not even been brought to trial.

(f) Article 19 of the Universal Declaration of Human Rights provides that no one may be interfered with because of his opinions and recognizes that everyone has the right to freedom of expression and opinion. Moreover, article 20 recognizes the right of everyone to freedom of peaceful assembly. Similar provisions are set forth in the International Covenant on Civil and Political Rights, which is an international instrument accepted by States and has thus to be taken into account in qualifying deprivations of freedom as arbitrary, in accordance with the mandate of the Working Group.

(g) It is clear from the above that the detained lawyers are in such a situation because they exercised the right to express their opinions freely and the right to be associated for political purposes in the political organization "Devrimci-Sol". The Working Group regards such a situation as arbitrary detention, in accordance with "Category II" of its principles applicable in the consideration of the cases submitted to it and which were recognized by the Commission on Human Rights in document E/CN.4/1992/20, which forms an integral part of this decision.

(h) The situation is aggravated by the fact that the lawyers concerned have been denied access in their place of detention to their lawyers and family members.

6. In the light of the above the Working Group decides that:

The detention of Murat Demir and Bedii Yaracii is declared to be arbitrary being in contravention of articles 9, 10 and 20 of the Universal Declaration of Human Rights, and articles 9, 19 and 21 of the International Covenant on Civil and Political Rights and falling within Category II of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the persons named to be arbitrary, the Working Group requests the Government of Turkey to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 4 December 1992

DECISION No. 45/1992 (ETHIOPIA)

Communication addressed to the Government of Ethiopia on 8 April 1992.

Concerning: Haile-Mariam Dagne, Tiruworq Wakayu and Kidane-Mariam Tadesse, on the one hand, and Ethiopia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Ethiopia. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. It appears from the facts as reported that Haile-Mariam Dagne, former Minister of Education and Ambassador to the German Democratic Republic, Vice-President of Addis Ababa University and Chairman of the Ethiopian Teachers Associations, Tiruworq Wakayu, Head of the Women's Section of the Workers Party of Ethiopia until May 1991 and the wife of former Deputy Prime Minister Teferra Wonde, and Kidane-Mariam Tadesse, Minister of Urban Development and Housing, were arrested in June 1991, following an order issued by the Provisional Government of Ethiopia which, after having taken power in May 1991, told former high Government officials to report to the new authorities. When they did so, they were reportedly arrested and detained. No specific reasons were given, then or since, either to the detainees or to their relatives who asked the authorities. Haile-Mariam Dagne, Tiruworq Wakayu and Kidane-Mariam Tadesse were said to be held by the security forces of the Ethiopian People's Revolutionary Democratic Front (EPRDF), together with over 200 other former party or local administrative officials arrested in mid-1991, in Sendafa Police College near Addis Ababa. Reportedly, the authorities stated that the detained officials were held on account of war crimes or human rights violations, and that they would receive fair trials in accordance with international standards. Some had reportedly been released in both Ethiopia and Eritrea, but no one has yet been formally charged with any offence. According to the source, there is no legal basis for these detentions. No formal state of emergency exists, yet the security forces of the EPRDF are able to arrest and detain people indefinitely without charge and

without the detainee having the right to challenge the detention through any judicial or administrative procedure. The criminal courts are reported to be inoperative since May 1991. The source further reported that most of the former officials were arrested on account of their position under the former government, and thus rather on account of collective responsibility for policies or abuses by the former government than on account of individual responsibility for particular criminal offences. In February 1992, a Special Prosecutor's Office was set up to deal with the cases as the first step to the opening of judicial proceedings against detainees, and legislation was being drafted regarding the judicial proceedings themselves.

6. It appears from the facts described above that Haile-Mariam Dagne, Tiruworq Wakayu and Kidane-Mariam Tadesse have been held in detention since June 1991 without being charged. They have been deprived of their right to use the judicial procedure for appealing against their detention and of their right to a fair trial, as guaranteed by articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. In view of the allegations made by the source, and particularly those regarding the detention of 200 other representatives of the former regime, which have not been disputed by the Ethiopian Government, the Working Group considers that the non-observance of international provisions concerning the right to a fair trial is such as to justify this decision.

7. In the light of the foregoing, the Working Group decides as follows:

> The detention of Haile-Mariam Dagne, Tiruworq Wakayu and Kidane-Mariam Tadesse since June 1991 is declared to be arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights and Principles 2, 4, 9, 10, 11, 12, 32, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Haile-Mariam Dagne, Tiruworq Wakayu and Kidane-Mariam Tadesse to be arbitrary, the Working Group requests the Government of Ethiopia to take the necessary steps to remedy the situation, so as to comply with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 8 December 1992

DECISION No. 46/1992 (EGYPT)

Communication addressed to the Government of Egypt on 31 January 1992.

Concerning: Ali Ahmed Gad al-Rab Ahmed, on the one hand, and the Arab Republic of Egypt, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Egypt. The Working Group transmitted the reply provided by the Government to the source, but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. It appears from the facts as reported that Ali Ahmed Gad al-Rab Ahmed, aged 22, university student, was arrested by agents of the State Security Investigation Police (SSIP) in Alexandria on 16 August 1990. Allegedly, he has been detained since then without charge or trial, under article 3 of the Emergency Law, which, with the exception of an 18-month period in 1980-1981, has been in force since 1967. After the arrest of Ali Ahmed Gad al-Rab Ahmed, a petition for his release on his behalf was reportedly submitted to the court which, on 19 September 1990, ordered his release. Allegedly, the Minister of the Interior objected. A second court decided to release him on 13 October 1990, but he was reportedly taken by the SSIP from the prison to a police station where he remained several days before being transferred back to prison with a new detention order. Three further petitions for release were reportedly submitted on Ali Ahmed Gad al-Rab Ahmed's behalf. Different courts were said to have decided his release on 3 December 1990, 22 December 1990, 7 February 1991, 28 February 1991, 23 May 1991 and 9 June 1991 on the grounds that there was insufficient basis for his detention. Each time, the Minister of the Interior allegedly objected to the court's decisions to release him.

6. In its reply, the Egyptian Government informed the Working Group that Mr. Ahmed Gad al-Rab was arrested in a furnished apartment in the Abu Qir district of Alexandria on the charge of planning, in association with others, to drug members of the Alexandria Coastguard with a view to gaining possession of their weapons. They intended to carry out this operation by using forged identity cards, stolen from an apartment in the town of Beni Suef, to which

they had affixed their photographs. The Department of Public Prosecutions was notified and began an investigation, as a result of which 10 charges were brought against the accused after he had admitted his involvement therein. The Department of Public Prosecutions ordered the competent authority to place him in precautionary detention pending trial in case No. 8648-90 by the Court of Misdemeanours at Muntazah. He has not yet been sentenced, since the case was still being heard by the judicial authorities. The Government has nevertheless failed to provide the Working Group with a reply to the following specific questions regarding which the Working Group requested clarifications: whether there was a provision under Egyptian law which authorizes the Minister of the Interior, in spite of a decision by the judiciary, to maintain a person in detention; how many detention orders had been issued to the person concerned and whether they were of a judicial or an administrative nature.

7. Without expressing an opinion on whether the Emergency Law, and particularly its article 3, is in conformity with international standards, the Working Group notes that there is nothing in the Government's reply that seriously contradicts the allegations by the source. Similarly, without giving an opinion on the charges brought against the person concerned or his culpability, the Working Group is required solely to determine whether the procedure for his preventive detention involved any arbitrary deprivation of freedom. The Working Group considers that the continued detention of Mr. Ahmed Gad al-Rab Ahmed from the time of the initial decision to release him, delivered on 13 October 1990 by the Supreme State Security Court, was not in conformity with domestic law or international standards, particularly article 9 of the Universal Declaration of Human Rights and article 9, paragraph 1, of the International Covenant on Civil and Political Rights. It feels this all the more strongly in that, on four occasions the Ministry of the Interior kept this person in detention without granting him the possibility of seeking remedy. The Working Group also considers that, in the case in question, non-observance of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom an arbitrary character.

8. In the light of the above the Working Group decides:

> The detention of Ali-Ahmed Gad al-Rab Ahmed, from 13 October 1990 on, is declared to be arbitrary being in contravention of article 9 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights, to which Egypt is a Party, and Principles 2, 4 and 9 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of Ali Ahmed Gad al-Rab Ahmed, to be arbitrary, the Working Group requests the Government of Egypt to take the necessary steps to remedy the situation, so as to comply with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 8 December 1992

DECISION No. 47/1992 (REPUBLIC OF KOREA)

Communication addressed to the Government of the Republic of Korea on 31 January 1992.

Concerning: Keun-Soo Hong, on the one hand, and the Republic of Korea, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government on 7 September 1992 in respect of the case in question, although the 90-day deadline indicated by the Working Group had expired on 31 April 1992.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the Republic of Korea. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. It appears from the facts as reported that Keun-Soo Hong, born in 1937, Presbyterian Minister and pastor of Hyang Rin Presbyterian Church in Seoul, was arrested by Agency of National Security Planning officials in Seoul on 20 February 1991, allegedly for his involvement with the dissident organization Pomminnyon (Pan-National Alliance for the Reunification of Korea). In August 1991, Reverend Keun-Soo Hong was reportedly sentenced to two years' imprisonment under the National Security Law. Charges against him were said to have included: praising North Korea in his sermons, the publication of a collection of writings about reunification, his comments on a television debate in 1988 on the issue of reunification, and his involvement in the organization of the South Korean headquarters of Pomminnyon.

6. It appears from the Government's reply, which was not disputed by the source, that Keun-Soo Hong was released on 24 August 1992 "after the completion of his prison term", even though, according to the initial information provided by the source, his prison term should have ended in February 1993.

7. While learning with satisfaction of this apparently early release, the Working Group nevertheless notes that Keun-Soo Hong has done no more than exercise the right to freedom of opinion and expression and the right to peaceful assembly and association provided for in articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights. That being so, and

after examining the relevant provisions of the above-mentioned National Security Law, under which the charges brought against him are of a criminal nature, the Working Group, notwithstanding the release, considers that the specific circumstances warrant its reaching a decision on whether or not the deprivation of liberty preceding the release was of an arbitrary character.

8. In the light of the above the Working Group decides:

> The detention of Keun-Soo Hong, from 20 February 1991 to 24 August 1992, is declared to have been arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights to which the Republic of Korea is a Party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

Adopted on 9 December 1992

DECISION No. 52/1992 (MYANMAR)

Communication addressed to the Government of the Union of Myanmar on 6 December 1991.

Concerning: Nay Min (alias Win Shwe), on the one hand, and the Union of Myanmar, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of an allegation of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. Bearing in mind the allegations made, the Working Group welcomes the cooperation of the Government of the Union of Myanmar. The Working Group has transmitted the reply of the Government of Myanmar to the source but, to date, the latter has not responded. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, taking into consideration the allegations made and the response of the Government thereto.

5. In giving its decision, the Working Group, in the interests of cooperation and coordination, has also taken into account the report of the Special Rapporteur of the Commission on Human Rights, Mr. Yokota, drawn up pursuant to the Commission's resolution 1992/58.

6. It appears from the facts as reported that Nay Min, a lawyer and journalist born on 12 February 1947, was arrested on 21 October 1988, without a warrant, by members of the military intelligence services while waiting, in a place which until then had been kept secret, for a telephone call from his BBC contacts. In July 1988 Mr. Christopher Gunness of the BBC had made contact with Nay Min during a trip to Burma. When Mr. Gunness subsequently became the BBC correspondent in Bangladesh, Nay Min agreed to transmit news on a regular basis to the BBC via Mr. Gunness by telephone from Yangon. At the time, only a few people were aware that Nay Min was working with the BBC. After Mr. Gunness's transfer, the BBC's Far Eastern service ended up being responsible for communicating with Nay Min. The latter continued to receive telephone calls at agreed times, under a name at a telephone number kept secret and known only to a small number of BBC staff. On the day of Nay Min's arrest, those who were regularly in contact with him were otherwise engaged, and a person of the name of Kyaw Zwa Thiin had been entrusted with calling him. Kyaw Zwa Thiin had in the past worked as an agent of the Burmese military intelligence services, in charge of the surveillance of insurgents in the north of the country. He is suspected of being involved in the arrest and

detention of Nay Min. According to the source, Nay Min was reportedly first sent to military intelligence headquarters at Yae Kyi Aing where he is said to have been severely tortured and denied hospitalization. Until February at least, he was reportedly detained at Insein prison in Yangon. It is thought that he is still held there, but this has not been confirmed. According still to the source, and also to the Special Rapporteur on the situation of human rights in Myanmar, normally, and in conformity with the Myanmar Constitution of 1974 and the Code of Criminal Procedure, an arrest warrant must be delivered prior to any arrest, and it is prohibited to detain a person for more than 24 hours without bringing him before a judicial authority. However, the Council of State for the restoration of public order has, under martial law, overridden these basic guarantees, in particular through the 1950 Emergency Protection Act and the 1975 Act protecting the State against the activities of subversive elements. Under these Acts, a detainee does not have the right to contest his detention or to request release on bail. On his first appearance before a court on 7 November 1988, Nay Min was reportedly informed that he was charged with defaming the Government (by communicating false reports to the BBC) and trouble-making. The 1950 Act authorizes the arrest and detention of any person who is discovered to be disseminating false reports or rumours likely to encourage disobedience or to disrupt the functioning of the State. At the hearing on 21 November 1988, Nay Min's detention was extended under section 10 (a) of the 1975 State Protection Law, which permits preventive detention for up to five years of any citizen if there are grounds for considering that the citizen has committed, is committing or preparing to commit an act jeopardizing the security of the State or constituting a threat to public order and the peace. Military courts have jurisdiction for this type of offence. Accordingly, on 5 October 1989, almost a year after his arrest, Nay Min was tried by Military Court No. 2, which found him guilty of having infringed section 5 of the 1950 Emergency Provisions Act by virtue of having been found in possession of anti-government literature and of having transmitted false information to the BBC. Nay Min was sentenced to 14 years' hard labour. These facts were confirmed by the Government of Myanmar in its reply, and also by the Permanent Representative of Myanmar to the United Nations Office at Geneva who addressed the Working Group on 29 September 1992 at its fourth session.

7. It may thus be noted that the Government of Myanmar does not dispute that, as the source maintains, Nay Min's detention results solely from his contacts with the BBC, to which he forwarded reports in his capacity as a journalist; that it is significant, as the Special Rapporteur notes in his preliminary report (A/47/651), that on the one hand, the cases of arbitrary detention reported in the country for the most part concern members of Parliament, political leaders, writers, Buddhist monks, and teachers and that, on the other hand, in cases where the legislative basis for detention has been indicated, section 10 (a) of the 1975 State Protection Law and section 5 (j) of the 1950 Emergency Provisions Act have most frequently been cited; and that it ultimately appears that Nay Min is being detained for having freely and peacefully exercised his right to freedom of opinion and expression, a right which is guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights.

8. In the light of the foregoing, the Working Group decides as follows:

> The detention of Nay Min is declared to be arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and specifically paragraph 2 of the Covenant, and falling within category II of the principles applicable to the consideration of cases submitted to the Working Group.

9. Consequent upon the decision declaring the detention of Nay Min to be arbitrary, the Working Group requests the Government of the Union of Myanmar, to take the necessary steps to remedy the situation, so as to comply with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 9 December 1992

DECISION No. 53/1992 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government of Syrian Arab Republic on 1 July 1992.

Concerning: Khalil Brayez, on the one hand, and the Syrian Arab Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Syrian Arab Republic. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the allegation, Khalil Brayez, former commander of the Air Force and author of numerous books, was abducted by the Syrian security forces from his home in Beirut (Lebanon) in November 1970 and taken to Syria. After being detained in many prisons, he is at present in the Al-Mazze prison, Damascus. He was sentenced in 1971 to 15 years of deprivation of freedom for the publication of his books in which he criticized the Syrian army. Shortly before the expiration of his sentence, new charges were brought which have already resulted in further deprivation of freedom for seven years, without any notification to him of a new sentence.

(b) It is alleged that the detention is arbitrary since it fails to respect, inter alia, articles 9, 10 and 19 of the Universal Declaration of Human Rights, articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is a party, and principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

(c) The above facts have not been disputed by the

(d) On the basis of the above, the Working Group concludes that the undisputed facts show that Khalil Brayez has been deprived of his freedom since 1970; that the reason for the deprivation of his freedom is his criticism of the Syrian army contained in books written by him; that the sentence which imposed 15 years of deprivation of freedom should have ended in 1985; that he continues to be deprived of his freedom and that no new charges have been established against him by a court decision.

(e) The Principles for the consideration of cases submitted to the Group regard as arbitrary any detention which manifestly cannot be linked to any legal basis, such as, by way of example, the continued detention of a person, despite the fact that he has fully served the sentence imposed upon him (Category I). It is also considered illegal to deprive a person of his freedom as a consequence of the legitimate exercise of specific rights recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, including the freedoms of opinion, expression and conscience.

6. In the light of the above the Working Group decides that:

> The detention of Khalil Brayez is declared to be arbitrary, being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights, and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights to which the Syrian Arab Republic is a Party, and falling within category II (for the period between 1970 and 1985), and categories I and II (since 1985) of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision declaring the detention of Khalil Brayez, to be arbitrary, the Working Group requests the Government of the Syrian Arab Republic, to take the necessary steps to remedy the situation, so as to comply with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 9 December 1992

DECISION No. 1/1993 (PHILIPPINES)

Communication addressed to the Government of the Philippines on 8 April 1992.

Concerning: Roland Abiog and Antonio Cabardo, on the one hand, and the Philippines, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government the of Philippines. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The source, in its communications of 18 June and 27 July 1992, informed the Working Group that both Roland Abiog and Antonio Cabardo were released on bail. Instead of filing the case in terms of paragraph 14 (a) of the Methods of work adopted by the Working Group, it has, despite the release of Roland Abiog and Antonio Cabardo, decided to render its decision since the case involves the settlement of a question of principle.

6. In the case of Roland Abiog, he was arrested under a "John Doe" warrant on 28 July 1991, in Tondo, Manila. He was allegedly taken to the PNP Jail Camp Crame in Quezon City and charged with violation of P.D. 1866, subversion (in violation of the law R.A. 1700) and kidnapping with serious illegal intention. On 2 December 1991 the Regional Trial Court of Lucena City (Branch 57) allegedly ordered the dismissal of the cases against him, his release and the recall of the arrest warrant. In the case of Antonio Cabardo, it is alleged he was arrested under a "John Doe" warrant on 9 April 1990 at the Ninoy Aquino International Airport. The warrant was produced only after his arrest. He was not allowed to see his attorney until after the inquest. He was allegedly transferred to the PNP Jail Camp Crame in Quezon City. The detention order was allegedly issued, after the inquest, by the Pasay City

kidnapping with [illegible] He was allegedly charged with violation of P.D. 1866 and

7. The irrefutable facts are that both Roland Abiog and Antonio Cabardo were arrested under a "John Doe" warrant and in the case of Antonio Cabardo, the said warrant was produced only after his arrest. The practice of issuing "John Doe" warrants and arresting persons without identifying them in the warrant of arrest entitles the authorities to arrest persons without first applying their minds as to their identity. Such a procedure cannot but be considered as arbitrary. The person concerned is neither identified nor are the reasons for his arrest known at the time of effecting it. It vests in the authorities effecting the arrests unbridled and unfettered exercise of power which cannot be justified under acceptable international norms and standards. Such arrests effected under "John Doe" warrants are in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

8. Roland Abiog was also charged with subversion under P.D. 1866 and subversion in violation of R.A. 1700. The Presidential Decree No. 1866 (P.D. 1866), for ensuring public order and safety, stipulates the circumstances in which the illegal manufacture of firearms and ammunition may be presumed and deals with the unlawful manufacture, sale, acquisition, disposition or possession of explosives and presumptions and penalties relating thereto. The Republic Act 1700 (R.A. 1700) declares the Communist Party of the Philippines to be an organized conspiracy to overthrow the Government of the Republic of the Philippines by force, violence, deceit, subversion or other illegal means. Overt affiliation and membership of the Communist Party involves diverse consequences including the penalty of "prison correctional". Conspiracy to overthrow the Government involves penal consequences.

9. The facts as brought on record do not indicate that Roland Abiog was in possession of any arms or was in any way indulging in unlawful manufacture, sale, acquisition, disposition of firearms or ammunition of instruments used or intended to be used in the manufacture of firearms and ammunitions nor do facts as disclosed seek to connect Roland Abiog with any of the offences under which he could possibly be charged under P.D. 1866. The fact that Roland Abiog had been charged under the Republic Act 1700 suggests that he had been arrested only on account of his being a member of the Communist Party of the Philippines. His detention was clearly illegal as it seems to have been effected because of his holding opinions which he is entitled to as part of his right to freedom of opinion and expression guaranteed under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

10. In the case of Antonio Cabardo, apart from his illegal arrest, his detention under P.D. 1866 was also arbitrary. Nothing stated in the facts could possibly have led to the conclusion that he was in any way involved in any of the activities to which P.D. 1866 applies.

11. In the light of the above the Working Group decides:

> The detention under a "John Doe" warrant, of Roland Abiog and Antonio Cabardo is declared to be arbitrary despite their release on bail, being in contravention of article 9 of the Universal Declaration of Human Rights, and article 9 of the International Covenant on Civil and

Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group. Roland Abiog having been detained for being a member of the Communist Party of the Philippines, his detention is also declared to be in violation of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within Category II of the principles applicable in the consideration of the cases submitted to the Working Group.

12. Having declared the detention of Roland Abiog and Antonio Cabardo to be arbitrary, the Working Group requests the Government of the Philippines to take note of its decision and in the light thereof bring its laws into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 2/1993 (PHILIPPINES)

Communication addressed to the Government of the Philippines on 8 April 1992.

Concerning: Rodolfo Salas, on the one hand, and the Philippines, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Philippines. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The source in its communication of 21 December 1992 informed the Working Group that Rodolfo Salas was released after completing his sentence. Instead of filing the case in terms of paragraph 14 (a) of the methods of work adopted by the Working Group, it has, in the facts and circumstances of this case, decided to render its decision on the nature of the detention.

6. Rodolfo Salas was arrested without a warrant on 29 September 1986 at Philippine General Hospital, Manila, by security personnel under the command of Lt. Col. Robert Delfin and Major Raul Carbonilla. He was allegedly charged with rebellion and was convicted in May 1991. It is alleged that he had been arrested for political reasons, since he was part of the negotiating panel of the National Democratic Front engaged in peace negotiations with the Government at the time of his arrest.

7. The facts clearly suggest that Rodolfo Salas was arrested without a warrant and was not informed of the reasons for his arrest. Besides, his conviction for the charge of rebellion seems to have a direct bearing on the fact that he was part of a negotiating panel of the National Democratic Front engaged in peace negotiations with the Government at the time of his arrest. This itself suggests that at the time of his arrest he could not possibly have been charged with rebellion. The arrest seems to be politically motivated.

8. In the light of the above the Working Group decides:

> The detention of Rodolfo Salas is declared to be arbitrary despite his release, being in contravention of article 19 of the Universal Declaration of Human Rights, and article 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Having declared the detention of Rodolfo Salas to be arbitrary, the Working Group requests the Government of the Philippines to take note of its decision and in the light thereof take such steps as are necessary to bring its actions into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 3/1993 (PHILIPPINES)

Communication addressed to the Government of the Philippines on 8 April 1992.

Concerning: Augusto César Tupas, on the one hand, and the Philippines, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Philippines. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Augusto César Tupas was arrested without a warrant on 30 November 1990, in Mandalagan, Bacolod. He was allegedly transferred to the Bacolod City Jail on 24 December 1990. A habeas corpus petition filed on his behalf by his wife was allegedly denied by Major Lázaro Torcita on the grounds that murder charges against him had already been filed. Nevertheless, it was alleged that the same officer himself filed the charges on 10 December 1990, four days after he had denied the petition. On 11 December 1990, RTC Vice Executive Judge Bethel Katalbas-Moscardon issued a warrant of arrest in connection with the murder charges filed against him. It was allegedly stated by the Second Assistant City Prosecutor that his arrest without a warrant was lawful and a preliminary investigation was not needed. On 17 December 1990 an arson charge was allegedly filed and a subsequent warrant of arrest was presented.

6. The facts demonstrate that the charges of murder filed against Augusto César Tupas were filed four days after the filing of the habeas corpus petition by August César Tupas's wife. The person denying the petition for habeas corpus, Major Lázaro Torcita, was the very officer who filed the charges four days after denying the habeas corpus petition, on the ground that the charges against Augusto César Tupas had already been filed. It is also clear that no preliminary investigation was conducted at the time of his arrest. The arrest of Augusto César Tupas is against accepted international norms and standards, he having been arrested without a warrant, without any preliminary investigation and without informing him of the reasons for his

arrest. This is in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. The fact that the officer filing the charges was the one who denied the habeas corpus petition itself suggests an arbitrary procedure in that the person filing the charges viz. the prosecutor, was the one who was entitled to deal with the habeas corpus petition. The fact that subsequently on 11 December 1990 a warrant of arrest was issued against Augusto César Tupas with murder charges against him suggests an attempt to justify the arbitrary arrest without a warrant effected on 30 November 1990. The filing of a charge of arson on 17 December 1990 reflects yet another attempt made by the authorities to justify the initial arbitrary arrest. More so when the facts do not demonstrate that Augusto César Tupas is in any way involved in the commission of the alleged offences.

7. In the light of the above the Working Group decides:

> The detention of Augusto César Tupas without a warrant on 30 November 1990 is declared to be arbitrary being in contravention of article 9 of the Universal Declaration of Human Rights, and article 9 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Augusto César Tupas to be arbitrary, the Working Group requests the Government of the Philippines to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 4/1993 (PHILIPPINES)

Communication addressed to the Government of the Philippines on 8 April 1992.

Concerning: Noé Andalán, Romeo Angot, Gilbert Arcenal, Dionesio Garson and Jesús Salvino, on the one hand, and the Philippines, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Philippines. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. In the case of Noé Andalan, the facts suggest that on 16 June 1991 he was arrested without a warrant at Kapatagan Municipal Jail. In the case of Romeo Angot, he too was allegedly arrested on 16 June 1991 at Kapatagan, Lanao del Norte. He also allegedly continues to be in detention at Kapatagan Municipal Jail. In the case of Gilbert Arcenal, he was allegedly arrested without a warrant on 20 November 1991 in Bacolod City. On 28 November 1991 he was transferred to Bacolod City Jail where he allegedly continues to be in detention. Dionesio Garson was allegedly arrested without a warrant on 13 September 1990 at Binalbagan by Lt. Teodoro Salido of the PNP. On 4 October 1990 he was allegedly transferred to the Provincial Jail where he allegedly continues to be in detention. Jesús Salvino was also allegedly arrested without a warrant on 25 November 1991 at Santolan, Pasig. Since 27 November 1991 he continues to be in detention at PNP Jail Camp Crame in Quezon City. It is also alleged that in respect of each of the persons detained thus far neither have any charges been filed against them nor have they been informed individually of the reasons for their arrest.

6. The practice of arresting persons without a warrant, not informing them of the reasons of their arrest and not filing charges against them within a reasonable period of time would render their detention arbitrary being in

contravention of articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

7. In the light of the above the Working Group decides:

> The detention of Neo Andalan, Romeo Angot, Gilbert Arcenal, Dionesio Garson and Jesús Salvino is declared to be arbitrary being in contravention of articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Neo Andalan, Romeo Angot, Gilbert Arcenal, Dionesio Garson and Jesús Salvino to be arbitrary, the Working Group requests the Government of the Philippines to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 5/1993 (PHILIPPINES)

Communication addressed to the Government of the Philippines on 8 April 1992.

Concerning: Rafael G. Baylosis, Benjamin de Vera and Ponciano Resuena, on the one hand, and the Philippines, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Philippines. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. In the case of Rafael G. Baylosis, he was arrested on 29 March 1988 in San Juan, Metro Manila, under an allegedly defective search warrant issued by the Pasig Regional Trial Court. He was allegedly transferred to the PNP Jail Camp Crame in Quezon City on 12 June 1988 where he continues to be in detention charged with violation of P.D. 1866. In the case of Benjamin de Vera, he was arrested on 29 March 1988 in San Juan, Metro Manila, under a search warrant which was later proven defective and suppressed by the Regional Trial Court. He allegedly continues to be in detention at the PNP Jail Camp Crame in Quezon City, on charges of violation of P.D. 1866. In the case of Ponciano Resuena, he was arrested under a search warrant issued for a person called Sonny Resuena, on 31 July 1991. He was allegedly transferred to the PNP Jail Camp Crame in Quezon City on 4 August 1991, charged with violation of P.D. 1866.

6. In the case of Rafael G. Baylosis his arrest under a defective search warrant is illegal, contrary to accepted international standards. Arrest without a valid search warrant is deemed to be arbitrary. It is in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. The fact that he has been charged with violation of P.D. 1866 also suggests that his continued detention is arbitrary. The facts as disclosed do not suggest that he has indulged in any of the activities considered to be prohibited under P.D. 1866 in terms of which a person can be charged with unlawful manufacture, sale,

acquisition, disposition or possession of firearms or ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition. Nor do the facts as alleged indicate that Rafael G. Baylosis was in any way connected with the unlawful manufacture, sale, acquisition, disposition or possession of explosives or that any of his activities were in furtherance of or connected with crimes of rebellion, insurrection or subversion.

7. In the case of Benjamin de Vera the facts clearly indicate that the warrant of search which was proved to be defective was made the basis of a search and a subsequent arrest without a warrant. It is in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. The allegations against him are also for violation of P.D. 1866. None of the facts alleged against him indicate any activities on his part which would attract any of the provisions of P.D. 1866.

8. In the case of Ponciano Resuena his detention is clearly arbitrary since he was arrested under a search warrant issued with reference to another person. It is in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. He too stands charged with violation of P.D. 1866. None of the facts alleged against him indicate any activities on his part which would attract any of the provisions of P.D. 1866.

9. In each of the cases the warrant issued against each of the persons was defective, disentitling the authorities to effect the arrest. Besides, the facts as disclosed do not indicate that the activities of each of them attract any of the provisions of P.D. 1866 entitling the authorities to proceed against them and charge them with violation of any of the provisions of P.D. 1866.

10. In the light of the above the Working Group decides:

> The detention of Rafael G. Baylosis, Benjamin de Vera and Ponciano Resuena is declared to be arbitrary being in contravention of article 9 of the Universal Declaration of Human Rights, and article 9 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

11. Consequent upon the decision of the Working Group declaring the detention of Rafael G. Baylosis, Benjamin de Vera and Ponciano Resuena to be arbitrary, the Working Group requests the Government of the Philippines to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION NO. 8/1993 (DOMINICAN REPUBLIC)

Communication addressed to the Government of the Dominican Republic on 6 November 1992.

Concerning: Teudo Mordán Gerónimo, on the one hand, and the Dominican Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government of the Dominican Republic in respect of the case in question. With the expiry of more than ninety (90) days since the transmittal of its letter, the Working Group is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Dominican Republic. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) It has been alleged that Teudo Mordán Gerónimo was detained on 24 June 1991 by the National Police and is now in La Victoria National Penitentiary, charged with being a guerrilla and inciting peasants to overthrow the Government;

(b) It is contended that an application was filed for a writ of habeas corpus and, on 28 November 1991, the Criminal Chamber of the Santo Domingo Court of Appeal ordered his release, a ruling that was confirmed by the Supreme Court of Justice on 8 May 1992; in addition, in June 1992, the Attorney-General instructed the Chief of the National Police to release the person concerned;

(c) It is added that Teudo Mordán Gerónimo is still being detained by the National Police, without charge;

(d) These facts have not been refuted by the Government, despite the fact that the period for a response has elapsed;

(e) In accordance with the principles applicable in the consideration of cases, attention is arbitrary when "it manifestly cannot be linked to any legal basis", for example, "continued detention beyond the execution of the sentence or despite an amnesty act";

(f) In the opinion of the Working Group, this is the case with Teudo Mordán Gerónimo, for not only is there no order to place him in custody, but the Supreme Court of Justice has ordered his release, something the National Police has failed to do, without any legal grounds;

(g) Accordingly, it is to be inferred that the detention is arbitrary, being in contravention of the human rights enunciated in articles 9 and 10 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, to which the Dominican Republic is a party.

6. In the light of the above, the Working Group decides the following:

> The detention of Teudo Mordán Gerónimo is declared to be arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and falls within category I of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent on the decision declaring the detention of the person concerned to be arbitrary, the Working Group requests the Government of the Dominican Republic to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 April 1993

DECISION No. 9/1993 (TURKEY)

Communication addressed to the Government of Turkey on 6 November 1992.

Concerning: Sekvan Aytu, on the one hand, and the Republic of Turkey, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the preliminary information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group but regrets that the final information which was promised has not been received and that the deadline which was mentioned has elapsed.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Turkey although it does not have the information which was promised in the first and only communication so far. The Working Group is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. The Working Group considers that:

(a) Sekvan Aytu, President of the Sirnak branch of the Turkish Human Rights Association, was detained on 14 May 1992 and held incommunicado, without charge, until 29 May;

(b) It is alleged that the reason for the arrest was that he took part in the funeral of Halit Gungen, the murdered journalist, which was regarded as an attempt to hold an unauthorized protest demonstration;

(c) It is further submitted that he was subjected to torture;

(d) The source states that there are no details as to the law applicable to this case but it is probable that he is being held under the Turkish anti-terrorist law;

(e) According to the note from the Government, the arrest was prompted by depositions, subsequently confirmed, of members of the armed wing of the PKK terrorist organization arrested and indicted earlier. According to the depositions, Sekvan Aytu had been active in the committee for the support of illegal activities through the legal organization ERNK;

(f) The Government adds that he is currently the subject of proceedings before the proper court and has been since 29 May 1992;

(g) Although it is 11 months since his arrest, Sekvan Aytu has still not been sentenced, the ground for his detention being a charge of political activities, which fact has been confirmed by the Government of Turkey;

(h) Carrying out political activities is a legitimate exercise of the freedoms and rights set out in articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights;

(i) With regard to the allegations of torture, the Working Group wishes to place on record that the matter lies with the Special Rapporteur on the question of torture, who examined the case in his latest report to the Commission on Human Rights (E/CN.4/1993/26, para. 496).

6. In the light of the above, the Working Group decides:

> The detention of Sekvan Aytu is declared to be arbitrary, being in contravention of articles 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights, and articles 8, 9, 19, 21, and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the person in question to be arbitrary, the Working Group requests the Government of Turkey to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 April 1993

DECISION NO. 10/1993 (SYRIAN ARAB REPUBLIC)

Communications addressed to the Government of the Syrian Arab Republic on 6 November and 10 December 1992.

Concerning: Afif Jamil Mazhar, Aktham Nu'aysa, Nizar Nayouf, Ya'qub Musa, Hassan Ali, Hussam Salama, Jadi Nawfal, Mohamed Ali Habib, Thabed Murad and Bassam Al-Shaykh, on the one hand, and the Syrian Arab Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communications received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiry of more than ninety (90) days since the transmittal of its letter, the Working Group is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Syrian Arab Republic. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communications have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the allegations, Afif Jamil Mazhar, Aktham Nu'aysa, Nizar Nayouf, Ya'qub Musa, Hassan Ali, Hussam Salama, Jadi Nawfal, Mohamed Ali Habib, Thabed Murad and Bassam Al-Shaykh, all members of the Committee for the Defence of Democratic Freedoms and Human Rights (CDF), were arrested on 18 December 1991 in Damascus and Al Ladhiqiyah by Military Investigation officials;

(b) It is alleged, in addition, that the first two were tortured;

(c) The first two were sentenced to nine years' hard labour by the State Supreme Court on 17 March 1992; there is no information about the sentences for the other persons;

(d) The acts behind the arrest and subsequent conviction, according to allegations, were criticisms that both of them made of the electoral plebiscite to re-elect the President of the Republic for a further seven years; the fact that they belonged to the Committee for the Defence of

Democratic Freedoms and Human Rights, and, in the case of Aktham Nu'aysa, the fact that he received US$ 1,400 from his brother, who lives abroad, supposedly to finance the CDF;

(e) It is added that the Court considered these acts as constituting the offences of opposition to the aims of the revolution, or causing disorder or incitement to disorder or spreading rumours to cause disorder, all of which is prohibited under Legislative Decree No. 6, paragraph (e), of 1965; the receipt of money was deemed to constitute the offence of receiving money from abroad in order to engage in a verbal or physical act hostile to the objectives of the revolution of 3 March 1963;

(f) In the absence of any reply from the Government, the Working Group considers it is true that the persons mentioned have been deprived of their freedom since the date in question and sentenced for the acts described, which have been regarded as constituting criminal offences;

(g) In its latest report to the Commission, the Working Group expressed its concern about "offences described vaguely or encompassing indeterminate situations. Abuse of charges for such offences leaves an uncertain borderline between what is lawful and what is unlawful, and is a constant source of violations";

(h) The conduct of the persons who are in detention (stating views against an "electoral referendum" and even distributing propaganda in support of their beliefs, and belonging to a human rights organization) is simply legitimate exercise of the rights set out in articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights. Furthermore, the use of offences that are vague or encompass a number of indeterminate situations, such as those in question, further undermine the rights of the persons in prison;

(i) With regard to the allegations of torture inflicted on Afif Jamil Mazhar and Aktham Nu'aysa, the Working Group declares that this matter does not fall within its competence, since the Commission on Human Rights has appointed a Special Rapporteur on the question of torture. It should be noted from his latest report that the Rapporteur had learned of the case of Aktham Nu'aysa (E/CN.4/1993/26, para. 496) but not of the allegations concerning Afif Jamil Mazhar.

6. In the light of the above, the Working Group decides:

> The detention of Afif Jamil Mazhar, Aktham Nu'aysa, Nizar Nayouf, Ya'qub Musa, Hassan Ali, Hussam Salam, Jadi Nawfal, Mohamed Ali Habib, Thabed Murad and Bassam Al-Shaykh is declared to be arbitrary, being in contravention of articles 9, 19, 20 and 21 of the Universal Declaration of Human Rights, and articles 9, 19, 21 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision by the Working Group declaring the detention of these persons to be arbitrary, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation, in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

8. The Working Group decides to bring this decision to the notice of the Special Rapporteur on the question of torture in so far as Afif Jamil Mazhar is concerned.

Adopted on 29 April 1993

DECISION No. 11/1993 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government of the Syrian Arab Republic on 6 November 1992.

Concerning Muhammad Munir Missouti, Abdullah Quabbara and Nash' At Tuma, on the one hand, and the Syrian Arab Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiry of more than 90 (ninety) days since the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Syrian Arab Republic. In the absence of any cooperation from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) Muhammad Munir Missouti, detained on 9 May (or 5 September) 1987, Abdullah Quabbara, detained on 4 May 1987, and Nash' At Tuma, detained on 25 February 1989, all lawyers and members of the Central Committee of the Communist Party, have been deprived of their freedom, without any charge or accusation being brought against them, in accordance with the provisions of the Martial Law which has been in force in the Syrian Arab Republic since 1963;

(b) Proceedings before the State Security Supreme Court have been instituted only against Muhammad Munir Missouti, and then only since September 1992;

(c) The detention, regardless of the grounds therefor, is arbitrary within the meaning of the terms of category II of the principles referred to in paragraph 3 of this decision. The only reason for the detention in actual fact - and this has not been contradicted by the Government - is that they belong to a particular political party, which is a legitimate exercise of freedom of expression, opinion and political association and of the right to take part in public affairs set out in articles 19, 20 and 21 of the Universal Declaration of Human Rights and 19 and 22 of the International Covenant on Civil and Political Rights;

(d) Furthermore, the Working Group, in its latest report to the Commission on Human Rights (E/CN.4/1993/24), expressed concern because very often declarations of constitutional states of emergency tend to be used continually, which is "a fruitful source of arbitrary arrests". This is the case with the Syrian Arab Republic.

6. In the light of the above, the Working Group decides:

> The detention of Muhammad Munir Missouti, Abdullah Quabbara and Nash' At Tuma is declared to be arbitrary, being in contravention of articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the person in question to be arbitrary, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION NO. 12/1993 (CUBA)

Communication addressed to the Government of Cuba on 1 July 1992.

Concerning: Yndamiro Restano Díaz, on the one hand, and the Republic of Cuba, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur on human rights in Cuba (E/CN.4/1993/39).

6. The Working Group considers that:

(a) According to the allegation, Yndamiro Restano Díaz was detained on 20 December 1991 by officials of the State Security Department. He was later tried by the Havana People's Court on 20 May 1992 and convicted of the offence of rebellion. Restano is the president of the "Movimiento de Armonía" organization, which claims to be pacifist. The sentence was 10 years' deprivation of freedom;

(b) In its reply, the Government confirms the date of the detention and the trial, together with the sentence. Unfortunately, the Government does not mention any act constituting rebellion, nor does it challenge the facts indicated by the source, which were communicated to it;

(c) The Special Rapporteur on human rights in Cuba refers in paragraph 40 (d) of his above-mentioned report to the situation under consideration and, in regard to essentials, confirms the facts alleged in the communication;

(d) Accordingly, the Working Group feels certain that the acts attributed to Restano are that the "Movimiento de Armonía" group is trying to change the country's political, economic and cultural system by violent means, including sabotage and attacks against the police and political leaders;

(e) Nor has there been any denial of the assertion by the complainant that the aim of the Movement in question is to contribute to a transition from State socialism to democratic socialism and that, since it was founded in 1990, it has constantly and publicly rejected the use of violence in the process of political change;

(f) To act as head of a political opposition movement - in other words, according to the information, the "Movimiento de Armonía" group - is simply lawful exercise of the rights to freedom of expression and opinion and to political association, enunciated in articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights, which, even though the Republic of Cuba is not a party to it, is applicable in accordance with the decision by the Working Group in its Deliberation No. 02;

(g) In accordance with the Group's method of work, detention on the grounds of legitimate exercise of the basic human rights in question is arbitrary and falls within category II, mentioned above.

7. In the light of the above, the Working Group decides the following:

> The detention of Yndamiro Restano Díaz is declared to be arbitrary, being in contravention of articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19 and 20 of the International Covenant on Civil and Political Rights, and falls within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision declaring the detention of the person named to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 April 1993

DECISION No. 13/1993 (MALAWI)

Communication addressed to the Government of Malawi on 6 December 1992.

Concerning: Orton Chirwa, Vera Chirwa and Chihana Chakfwa, on the one hand, and the Republic of Malawi, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than 90 days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Malawi. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of these cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The communication transmitted by the source states that Orton Chirwa, born on 31 January 1919, a statesman and lawyer, and his wife Vera Chirwa, also a lawyer, were arrested on 24 December 1981 at Chipata, Zambia (or in Mchinji District, Malawi). It further states that they were subsequently tried and found guilty of treason by the Southern Regional Traditional Court in Blantyre which sentenced them to death. Their guilt and penalty were confirmed by the National Traditional Court of Appeal, but the death sentence was commuted to life imprisonment by the President. The two detainees were apparently held in the Central Region of Zomba.

6. According to the source, the detention of the Chirwas is arbitrary because of the following three fundamental irregularities of procedure at their trial:

(a) The Government did not produce sufficient proof that the Chirwas had committed an act of treason. According to the law of Malawi a person commits treason when he engages in conspiracy or attempted conspiracy to overthrow the legally constituted Government by force or by other illegal means (Penal Code, chap. 7:01, para. 38 (1) (a)). The Court of Appeal expressly acknowledged that in the case of the Chirwas no proof was produced of the existence of weapons, the direct use of force, or a demonstration of force or that force might have been used. The only point established with certainty was that the Chirwas belonged to an organization operating outside Malawi which advocates political reforms in Malawi.

(b) In the case of the Chirwas, the courts violated Malawi law by acting beyond their powers. According to Malawi law, a regional traditional court has competence only over individuals who live and have committed offences in Malawi. However, as explained by the Court of Appeal, the alleged acts of treason of which the Chirwas were accused all took place outside Malawi, and the Chirwas, who had been in exile for a long time, were not living in Malawi.

(c) The Chirwas asked to exercise their basic rights to have a counsel for their defence and to summon witnesses to testify in their favour, but these requests were refused. The Court of Appeal admitted that there were procedural irregularities during the trial of the Chirwas. Nevertheless, without substantiating its decision and with one dissenting opinion the Court of Appeal confirmed the Chirwas' guilt and the sentence imposed on them.

7. The communication also mentioned that Chihana Chakfwa, aged 52, a trade union leader, was arrested by the police on 6 April 1992 at Kamuga airport, Lilongwe, when he was leaving a plane. Since that date he has been detained without trial and is currently believed to be imprisoned in Zomba. He was reportedly accused of unspecified acts of sedition.

8. According to the source, the detention of Chihana Chakfwa was due solely to his trade union activities and his advocacy of non-violent democracy, and violated his right to freedom of expression and association. It should be noted that on 7 April 1993 the Working Group issued an urgent appeal to the Government of Malawi to give Chihana Chakfwa adequate medical treatment as required by his state of health and to ease his conditions of detention. The Government of Malawi has not yet responded to this appeal.

9. A letter dated 28 October 1992 addressed by the source to the Working Group, stated that Orton Chirwa had died in prison on 19 October 1992.

10. It should lastly be noted that in a press release dated 24 January 1993 Mr. Kamuza Banda, the Life President of Malawi, announced that for strictly humanitarian reasons he had decided to grant a pardon to Vera Chirwa, who was freed the same day. The same press release confirmed the death of her husband in prison.

11. All of the above shows that the detention of Orton and Vera Chirwa and the detention of Chihana Chakfwa were due solely to their pro-democratic activities; they were in fact only exercising freely their rights to freedom of opinion, expression and association. It also shows there was no indication that they resorted to violence in their activities, or incited violence or threatened national security or public order in any way. It should be added that their very harsh conditions of detention might have been the cause of the death of Orton Chirwa and justified the Working Group's urgent appeal to the Government of Malawi concerning Chihana Chakfwa, an appeal that has unfortunately gone unanswered.

12. In the light of the above, and taking into account the provisions of paragraph 14 (a) of its methods of work as they concern Vera Chirwa, who has been freed, the Working Group decides:

> The detention of Orton Chirwa, Vera Chirwa and Chihana Chakfwa is declared to be arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, and articles 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights, and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

13. Consequent upon the decision of the Working Group declaring the detention of Chihana Chakfwa to be arbitrary, the Working Group requests the Government of Malawi to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

14. Having declared the detention of Orton Chirwa and Vera Chirwa to be arbitrary, the Working Group requests the Government of Malawi to take note of its decision and in the light thereof to take such steps as are necessary to bring its actions into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 14/1993 (VIET NAM)

Communication addressed to the Government of Viet Nam on 18 May 1992.

Concerning: Nguyen Dan Que, on the one hand, and the Socialist Republic of Viet Nam, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Viet Nam. The Working Group transmitted the Government's reply to the source but to date the source has not responded. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. Nguyen Dan Que, 48 years of age, a radiotherapist and head of the Cho-Ray hospital in Ho Chi Minh City, was arrested on 14 January 1990. On 29 November 1991 he was tried and convicted under article 73 of the Criminal Code, which prohibits "activities to overthrow the Government of the people". He was sentenced to 20 years' imprisonment and 5 years' restricted residence. He is now reportedly in the Phan Dong Luu prison, Gia Dinh, Than Pho, in Ho Chi Minh City.

6. According to the source, Nguyen Dan Que was one of the founder members in 1990 of a political movement called Cao Trao Nhan Ban (Humanist High Tide Movement). On 11 May 1990 the movement published a declaration calling on all Vietnamese, as well as persons outside Viet Nam, to sign a petition for non-violent political, social and economic reforms, including the introduction of a multi-party system, in Viet Nam. Nguyen Dan Que's arrest followed shortly afterwards on 14 June 1990. On 28 October 1991 (a month before the trial), an official gazette Php Luat (Laws and regulations) said that Nguyen Dan Que had used his surgery in Ho Chi Minh City to engage in propaganda against the Government. According to the gazette, when Nguyen Dan Que was arrested in June 1990, the authorities found at his home thousands of copies of documents ready for distribution, calling on the Vietnamese to overthrow the Government and to build "a nation with human rights".

7. The source of the communication states that, for the 18 months up to the time he was convicted, Nguyen Dan Que was denied the right to the assistance of counsel and that, in the course of his trial, which was held in camera, he was denied the right to speak in his own defence.

8. The source adds that the crime of "engaging in activities to overthrow the Government of the people", established in article 73 of the Vietnamese Criminal Code, draws no distinction between armed or violent acts, which might constitute a danger to national security, and non-violent exercise of the rights to freedom of expression and association.

9. In its reply, the Government, which confirms as indicated by the source that Nguyen Dan Que was prosecuted, tried and convicted for violating the terms of article 73 of the Vietnamese Criminal Code, none the less adds that the trial was held publicly on 29 November 1991 in the People's Court in Ho Chi Minh City, which sentenced him to 20 years' imprisonment for his activities to overthrow the Government. The Government of the Socialist Republic of Viet Nam also stated that Nguyen Dan Que was not a political prisoner, nor was he subjected to so-called "arbitrary detention or 'involuntary or enforced disappearance'". The Government also maintains that he was sentenced fairly by the court in accordance with the law.

10. It therefore follows from the foregoing that the charge against Nguyen Dan Que, which entailed a sentence of 20 years' imprisonment, is that he violated article 73 of the Vietnamese Criminal Code, which "prohibits" activities to overthrow the Government of the people. But as pointed out by the source and not contradicted by the Government, Nguyen Dan Que's arrest came shortly after a political movement called Cao Trao Nhan Ban, of which he was one of the founder members, published a declaration calling for signatures to a petition for non-violent political, economic and social reforms, with the introduction of a multi-party system. The Working Group considers that this is the real reason for Nguyen Dan Que's arrest and conviction, since the Government of Viet Nam seems to liken what is simply peaceful exercise of the rights to freedom of opinion, expression and association to "activities to overthrow the Government of the people".

11. In the light of the above, the Working Group decides the following:

> The detention of Nguyen Dan Que is declared to be arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights, and falls within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

12. Consequent upon the decision declaring the detention of Nguyen Dan Que to be arbitrary, the Working Group requests the Government of the Socialist Republic of Viet Nam to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION NO. 15/1993 (VIET NAM)

Communication addressed to the Government of Viet Nam on 6 November 1992.

Concerning: Nguyen Khac Chinh, Doan Viet Hoat, Doan Thank Liem, Do Ngoc Long and Nguyen Chu, on the one hand, and the Socialist Republic of Viet Nam, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communications received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government in respect of the cases in question. With the expiry of more than ninety (90) days since the transmittal of its letter, the Working Group is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Viet Nam. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstance of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The cases in question communicated to the Working Group were as follows:

- Nguyen Khac Chinh, 70 years of age, a lawyer, member of the Vietnamese Bar Association, writer, member of the Vietnamese branch of the Pen Club. He was reportedly arrested on 27 December 1975 at his home in Ho Chi Minh City by two security agents who took him to the "district security office", "to answer a complaint lodged against him by one of his former clients". Since that date he is said to have been held, without charge or trial, in a number of places of detention. The reason for his arrest was reportedly "expressing anti-revolutionary thoughts";

- Doan Viet Hoat, 50 years of age, an English teacher in an agricultural college and former administrative vice-chancellor of the Van Hanh University. He is also said to have been involved in publishing and distributing "Free Forum" a publication which was regarded as illegal and which advocated human rights, political pluralism and democracy in Viet Nam. He was allegedly arrested on 17 December 1990 at his home in Ho Chi Minh City and has been held since then, without trial, in the following places of detention: Chi-Hoa Prison; a temporary detention centre in the district of Binh Thanh, Ho Chi Minh City, and Phan Dang Luu Prison (district of Binh Thanh), where he is said to be held at the present time. He is reportedly charged with activities to overthrow the Government of the people, under article 73 of the Criminal Code.

According to the source, Doan Viet Hoat is being held in violation of his right to freedom of expression and association.

- Doan Thanh Liem, 58 years of age, a lawyer, former co-director of the "Shoeshine Boys", a charity organization. He is reported to have been arrested on 23 April 1990, tried and convicted on 13 May 1992 to 12 years' imprisonment for "acts of propaganda against the socialist regime". At the present time he is said to be held in the Phan Dang Luu Prison, Giai Phung, Ho Chi Minh City;

According to the source, Doan Thanh Liem's arrest occurred shortly after he met Nick Malloni, a foreign journalist who went on to publish an article criticizing the Vietnamese Government in the "Far Eastern Economic Review". The source adds that Doan Thanh Liem's arrest and conviction seem to have been based on three documents: an article found at his home, written by an American friend (Doug Hostetter) concerning the non-violent overthrow of communism in Eastern Europe and the role played by the Catholic Church in that development; comments criticizing the Vietnamese Government's education system, found in Doan Thanh Liem's personal diary and notes suggesting legislative changes in Viet Nam, that Doan Thanh Liem showed to his friends.

According to the source, these activities are protected by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, guaranteeing the right to freedom of opinion and expression.

- Do Ngoc Long, 56 years of age, an economist, former co-director of the "Shoeshine Boys" charity organization. He is said to have been arrested on or about 23 April 1990 and has been held since that date, without charge or trial. After he was arrested, Do Ngoc Long was held in the Phan Dang Luu Prison in Ho Chi Minh City. In July 1992 he was said to have been taken to the Chi-Hoa Prison hospital, in the same city. At the present time, he is reported to have left hospital but is still being held in the Chi-Hoa Prison. The source does not know the precise charges against Do Ngoc Long, but believes that he is accused of spying as a result of his contacts with foreigners. The foreigners include Nick Malloni, the journalist mentioned in case No. 3; Michael Morrow, an American businessman who was expelled from Viet Nam after being accused of spying - an accusation denied by the person concerned; and Richard Hughes, the American founder of the "Shoeshine Boys" charity organization, which is intended to help street children displaced by the war. The source also states that the law applied was article 71 of the Code of Criminal Procedure, which allows temporary detention for the purposes of the investigation. According to the source, this law also provides that any detention in excess of eight months requires authorization from the Chief Prosecutor of the People's Supreme Control Body. The source adds that there is no indication of any such authorization being granted in the case of Do Ngoc Long.

- Nguyen Chu, 60 years of age, a Protestant clergyman of the Evangelical Church of Viet Nam and a teacher, living in Kontum, in the province of Gia Lai-Kon Tum. He was reportedly arrested by six security agents at his home on 13 May 1990. The arrest was connected with a number of decisions that were disclosed on 10 May 1990 by the People's Committee of his place of residence. The Committee is said to have referred to a police report accusing the clergyman of organizing an unlawful meeting at his home, and concluding that Pastor Nguyen Chu was a danger to "collective security". The Committee is also said to have accused the Evangelical Church of Viet Nam of being "in the service of the Americans" and supporting the "United Front in the Struggle for Oppressed Races" (FULRO - an armed opposition movement active in the region).

According to the source, the clergyman is still being held without charge or trial, for exercising his rights to freedom of expression, freedom of association and freedom of religion.

6. In the case of Nguyen Khac Chinh, it should be noted that, in a letter addressed to the Secretariat on 8 January 1993, his wife stated that he was released on 27 December 1992 from the re-education camp where he was being held. Accordingly, in accordance with paragraph 14 (a) of the Group's methods of work, the case is filed.

7. As to the other persons mentioned in the communication, it seems that they are accused of engaging in activity to promote human rights, political pluralism and democracy in Viet Nam (the case of Doan Viet Hoat), or being in contact with foreigners, United States journalists in this instance, who had criticized the political or educational system in Viet Nam (Doan Thanh Liem, Do Ngoc Long, Nguyen Chu) when, in doing so, they were simply exercising their rights to freedom of opinion, expression and association. In addition, they have not been recognized the right to be tried fairly without undue delay, not to mention the fact that most of them have been held without charge.

8. In the light of the above, the Working Group decides the following:

> The detention of Doan Viet Hoat, Doan Thanh Liem, Do Ngoc Long and Nguyen Chu is declared to be arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights, and falls within category II of the principles applicable in the consideration of the cases submitted to the Group.

9. Consequent upon the decision declaring the detention of Doan Viet Hoat, Doan Thanh Liem, Do Ngoc Long and Nguyen Chu to be arbitrary, the Working Group requests the Government of the Socialist Republic of Viet Nam to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 16/1993 (INDONESIA)

Communication addressed to the Government of Indonesia on 8 April 1992.

Concerning: Arswendo Atmowiloto, on the one hand, and Indonesia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Indonesia. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. Certain facts are not in dispute: that of the arrest of Arswendo Atmowiloto in October 1990 and his subsequent conviction in April 1991; that the arrest was a direct consequence of the publication in the weekly "Monitor" of which he is the editor, is also not in dispute. The publication reflected the results of an opinion poll on the popularity of personalities in which Prophet Mohammed ranked eleventh. This, according to the Government, "incited demonstrations in many quarters demanding that action be taken against the tabloid and the person who conducted the poll". The Government contends that Mr. Atmowiloto committed an offence in violation of the rights and duties of the press in articles 2 and 3 of (Press) Law No. 11/1966, in conjunction to Law No. 4/1967 and Law No. 21/1982. Mr. Atmowiloto, brought to trial, was found guilty of violating article 156 (a) of the Indonesian Penal Code (KUHP) and of article 4 of Presidential Decree No. 1/1965. The Court of First Instance of Central Jakarta sentenced Mr. Atmowiloto to five years imprisonment. On appeal the High Court of Jakarta reduced the sentence to four years and six months. In November 1991 the Supreme Court upheld the conviction and found Mr. Atmowiloto guilty of "intentionally misusing a publication for personal purposes, resulting in a violation of the functions and duties of the press".

6. On the basis of the above the Government contends that recourse to the applicable laws having afforded Mr. Atmowiloto an opportunity to use all legal processes conducted in a correct and fair manner in accordance with the existing criminal law procedure disentitles the Working Group to consider the case admissible, keeping in mind its own methods of work.

7. The Government's position does not take note of category II of the principles applicable in the consideration of cases submitted to the Working Group. The said category deals with cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of some of the rights and freedoms protected by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

8. Article 19 of the Universal Declaration of Human Rights stipulates that everyone has the right to freedom of opinion or expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Similarly, article 19 of the International Covenant on Civil and Political Rights ensures everyone the right to hold opinions without interference. The right to freedom of expression includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Such rights are subject only to such restrictions as are provided by law and necessary for the respect of the rights or reputations of others or for the protection of national security or of public order or of public health or morals.

9. Arswendo Atmowiloto's publication in the weekly tabloid "Monitor" the result of the opinion poll on the popularity of personalities, which he himself carried out, was an exercise of the right to freedom of expression and, was in no way designed to, either directly or indirectly, adversely affect the rights or reputations of others. Nor does such a publication jeopardize national security, public order, public health or morals. The provisions of law that Mr. Atmowiloto is said to have violated have not been clearly stated. Assuming, however, that statuting provisions prohibiting publications of the nature we are dealing with were to be part of the law, such legislation would clearly not be in conformity with acceptable international norms and standards as set out above. The conclusion that Mr. Atmowiloto intentionally misused a publication for personal purposes, violating the functions and duties of the press does not specify the functions and duties said to have been violated. For such duties to be enforced, these must relate to respecting the rights and reputations of others or for the protection of national security or public order or public health or morals.

10. Prosecutions and convictions based on laws which do not protect the legitimate right to freedom of expression must be regarded as cases of deprivation of freedom. This principle applies squarely to Mr. Atmowiloto's prosecution and conviction.

11. In the light of the above the Working Group decides:

> The detention of Arswendo Atmowiloto is declared to be arbitrary being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights, and articles 9 and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

12. Consequent upon the decision of the Working Group declaring the detention of Arswendo Atmowiloto to be arbitrary, the Working Group requests the Government of Indonesia to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 17/1993 (ISRAEL)

Communication addressed to the Government of Israel on 10 December 1992.

Concerning: Sami Abu Samhadanah, on the one hand, and the State of Israel, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Israel. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Sami Abu Samhadanah was first arrested on 27 June 1981 at the age of 18. Upon his release after conviction, he has subsequently suffered detention intermittently by a string of administrative detention orders each effective for six months. It is alleged that on 10 June 1990, soon after he got married in April of the said year, he was again arrested pursuant to the issuance of a 12-month administrative detention order dated 28 May 1990. Since then, he is alleged to be continuously in detention. A fresh order issued while in detention extended the period of detention till May 1992. Before the expiration of the period of detention, in January 1992 the then Government of Israel ordered the expulsion of Sami Abu Samhadanah, along with 11 others. While petitions challenging the expulsions were pending before the High Court of Justice, the new Israeli Government, while cancelling the said orders, issued fresh administrative detention orders. The result being that Sami Abu Samhadanah continues to be in detention.

6. Following the cancellation of his expulsion order but before the issuance of a fresh order of detention, Sami Abu Samhadanah gave his lawyer on 27 August 1992 an affidavit the following extracts of which are relevant:

> "I am convinced that had I been released, I would have been able, as a free and independent man, to contribute to the well-being of others. By 'others' I mean my family and in particular my mother and my old

father (and) my wife with whom I lived for just two months and my little daughter Beirut who has met me only behind the bars. By others I also mean my community and my people.

"I have never practised violence nor advocated it as means to achieve political, social or national aims, let alone personal. It was the deportation order that had thrown me off my mental balance to such a degree that in my testimony before the appeal committee I said: 'if I am deported, I will return to my homeland armed'."

7. The apparent reason for Sami Abu Samhadanah's continued administrative detention is the allegation that he was an activist in the Unified National Leadership (UNL) of the Intifada on behalf of "al-Fatah", a faction of the Palestine Liberation Organisation (PLO). While dealing with the challenge to the detention order of 28 May 1990, the judge, after perusing the classified information provided by the General Security Service (GSS), none of which was shown to Sami Abu Samhadanah or his lawyer, found that his activities intended to harm the security of the region and its inhabitants. The detention without charge, trial or interrogation was held to be justified. The withholding of information from Sami Abu Samhadanah or his lawyer was for protection of the GSS sources of information.

8. It is significant to note that when the detention of Sami Abu Samhadanah effected under the detention order of 28 May 1990 was extended, before its expiration, by the issuance of a fresh order of detention, it was allegedly based on the ground that he had continued his activities in his place of detention. It is also reported that Sami Abu Samhadanah has not been interrogated since 1987. Also, no attempt has been made to bring him to trial since his administrative detention began in 1985.

9. It is no doubt true that the al-Fatah movement has been advocating violence against Israel. Even accepting the fact that Sami Abu Samhadanah is a member of an organization associated or connected with the PLO, no evidence has been brought on record to establish even prima facie his direct or indirect complicity in specific acts of violence. There is nothing to suggest that he has ever advocated violence. Indeed the affidavit of 27 August 1992 is an affirmation by him of his never having practised violence or advocated it. He considers resort to violence as an act of mental imbalance. Seven years of almost continuous administrative detention in these circumstances, must be considered to be arbitrary.

10. None can doubt that Sami Abu Samhadanah, in continuing his activities, seeks to achieve certain political, social or national aims. The authorities having issued a fresh order of detention effective till 29 May 1992, while he was already under detention by virtue of an order dated 28 May 1990, on the ground that he had continued his activities in his place of detention, indicates, in the absence of any material to the contrary, that the period of detention was extended, not for his active or indirect involvement in any act of violence but for his opinions and non-violent activities.

11. The issuance of a string of detention orders, spreading over a period of almost seven years, leads to the presumption that the act of detention is punitive rather than preventive. The fact that Mr. Samhadanah has not been

interrogated since 1987 and that no attempt has been made, since 1985, to bring him to trial, reinforces the conclusion as to the punitive nature of the detention. Besides, by the issuance of a string of detention orders Mr. Samhadanah has suffered administrative detention for an obviously abusive period of time.

12. In the light of the above the Working Group decides:

> The detention of Sami Abu Samhadanah is declared to be arbitrary being in contravention of articles 9 and 11 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

13. Consequent upon the decision of the Working Group declaring the detention of Sami Abu Samhadanah to be arbitrary, the Working Group requests the Government of Israel to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 18/1993 (ISRAEL)

Communication addressed to the Government of Israel on 6 November 1992.

Concerning: Walid Zakut, on the one hand, and the State of Israel, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Israel. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Walid Zakut was allegedly arrested on 16 June 1992, pursuant to the issuance of a four-month administrative detention order. He is said to be held at the Ketziot detention centre in southern Israel. He is accused of being an activist in the Democratic Front for the Liberation of Palestine (DFLP). At the beginning of 1992 he was appointed as a member of the advisory committee to the Palestinian delegation to the fourth round of the Middle East peace negotiations. Walid Zakut had been imprisoned on a number of occasions in the past, in 1987 and between 1989 to 1991, for charges reportedly relating to his membership of the DFLP.

6. Walid Zakut has allegedly, during the period of his four-month detention, made a statement to his lawyer which indicates that at the beginning of the peace talks, while in prison, his opinion was that to participate in the peace talks was a step in the right direction. He states that his opinion was publicized in newspapers. He further states that since his release, all his activity was political, open and supportive of the peace process. He states that he has never practised violence nor called upon others to use it.

7. Accepting the fact that Walid Zakut is a member of the DFLP which advocates violence and carries out acts of violence, no evidence has been brought on record to establish even prima facie his direct or indirect complicity in specific acts of violence. There is nothing to suggest that he has ever advocated violence. Indeed his statement made to his lawyers is an

affirmation by him of his never having practised violence or advocated it. No specific acts have been attributed to Walid Zakut beyond mere membership of the DFLP. His administrative detention, even for four months, in these circumstances, is considered to be arbitrary.

8. None can doubt that Walid Zakut, in continuing his activities seeks to achieve certain political objectives. That he was a member of the advisory committee to the Palestinian delegation to the fourth round of the Middle East peace negotiations, bears testimony to his political objectives. The four-month order of detention was presumably issued not for his direct or indirect involvement in any specific acts of violence but for his opinions and non-violent activities. He has till date, in fact, never been told by the Israeli civil administration (in the Gaza strip) or by anybody else that his activities were illegal or undesirable.

9. The basis of the detention of Walid Zakut is the accusation that he is an activist member of the DFLP. In the absence of any specific material in support thereof, such detention cannot be supported in any legal basis. Membership of an organization cannot provide any legal basis for the detention of a person. For such detention to be upheld as a preventive measure it must be shown that the person concerned has committed, or is in the process of committing acts in furtherance of the objectives of the organization of which he is a member. Walid Zakut's detention is in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

10. In the light of the above the Working Group decides:

> The detention of Walid Zakut is declared to be arbitrary and cannot be supported on any legal basis. It is in contravention of article 9 of the Universal Declaration of Human Rights, and article 9 of the International Covenant on Civil and Political Rights and falling within category I of the principles applicable in the consideration of the cases submitted to the Working Group.

11. Consequent upon the decision of the Working Group declaring the detention of Walid Zakut to be arbitrary, the Working Group requests the Government of Israel to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 20/1993 (NIGERIA)

Communication addressed to the Government of Nigeria on 31 January 1992.

Concerning: Mrs. Gloria Anwuri, on the one hand, and the Federal Republic of Nigeria, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that, to date, no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than 90 days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of allegations made, the Working Group would have welcomed the cooperation of the Government of Nigeria. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication from the source, a summary of which has been transmitted to the Government of Nigeria, Gloria Anwuri is the sister of a businessman suspected of having financed the failed coup d'état in April 1990. She was arrested on 8 May 1990 by members of the Nigerian armed forces on orders from Admiral August Aikhomu, who was Chief of General Staff at that time, and Vice-President of the Republic. She was detained until August 1991 by the directorate of the military intelligence service at Apapa, Lagos. She was then transferred to a women's prison at Kirikiri near Lagos. The source informed the Working Group, at its request on 14 January 1993 that Gloria Anwuri had been unconditionally released on 12 March 1992. According to the source, Gloria Anwuri had in any case been detained without being charged, indicted nor tried by a court. She had not even been prosecuted for participation in the failed coup nor for failing to report the crime of high treason to the authorities.

6. The source indicates that Gloria Anwuri was held in administrative detention under the Decree (No. 2 of 1984) relating to the Security of the State (Detention of Persons), which gives the Vice-President of the Republic the power to order the administrative detention for a period of six weeks, renewable at any time, of any person who threatens State security or the national economy. A 1990 amendment to the Decree established a committee to review these detentions every six weeks but, according to the source, the case of Gloria Anwuri has not been considered by this committee.

7. The source states that in December 1990, following an action brought before the Lagos Supreme Court, Judge Kessington ruled that the case of Gloria Anwuri was not within his competence but within that of the Council of the Armed Forces, the Council of State and the Federal Executive Council. None the less, on 2 February 1991, the Supreme Court reportedly ordered the Government to issue a warrant for the arrest of Gloria Anwuri, to ensure that the legal obligation to renew the warrant every six weeks was respected, considering that the detention was arbitrary in character as the warrant had not been renewed since 19 November 1990. According to the source, the representative of the Government replied that the Supreme Court had already received the relevant documents authorizing the detention and, in June 1991, Judge Kessington had deferred the case because, in his view, it was not within his competence and had renewed the order to release Gloria Anwuri, inter alia, for humanitarian reasons.

8. It is apparent from the facts as described above that Gloria Anwuri was kept in detention without charge from 8 May 1990 to 12 March 1992, because she was the sister of a person suspected of having financed the failed coup d'état. During her detention, she was deprived of her right to use the legal procedure which would have allowed her to state her objections to her detention, as well as her right to a fair trial, rights guaranteed by articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

9. In the light of the allegations made by the source and, in particular, those concerning the alleged grounds for the detention of Gloria Anwuri, as well as those relating to abnormal judicial procedure, allegations which have not been challenged by the Nigerian Government - in the absence of any information from it, and in accordance with paragraph 14 (a) of its methods of work, the Working Group considers that the non-observance of Nigerian legal norms makes it manifestly impossible to link the detention of Gloria Anwuri to any legal basis and justifies the following decision.

10. In the light of the above, the Working Group decides:

> The detention of Gloria Anwari from 8 May 1990 to 12 March 1992 is declared to be arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falling within category I of the principles applicable in the consideration of the cases submitted to the Working Group.

11. Having declared the detention of Gloria Anwuri to be arbitrary, the Working Group requests the Government of Nigeria to take note of its decision and, in the light thereof, to take such steps as are necessary to bring its actions into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 21/1993 (MOROCCO)

Communication addressed to the Government of Morocco on 6 November 1992.

Concerning: Mr. Noubir El Amaoui, on the one hand, and the Kingdom of Morocco, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that, to date, no information has been forwarded by the Government in respect of the case in question. With the expiry of ninety (90) days since the transmittal of its letter, the Working Group is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. According to the communication, a summary of which was transmitted to the Moroccan Government, Noubir El Amaoui, a member of the political bureau of the Socialist Union of the People's Forces and Secretary-General of the Democratic Labour Confederation, was arrested by security agents on 17 April 1992 at the hearing of the Rabat Court of First Instance, in the course of the proceedings. They are reported to have acted on the orders of the Department of Public Prosecutions, further to a complaint laid by the Prime Minister, on behalf of the Moroccan Government.

5. According to the source of the communication, Noubir El Amaoui was sentenced under article 400 of the Code of Criminal Procedure to two years' imprisonment for defamation of members of the Government. The conviction is said to have been based on an interview published by the Spanish newspaper "El Pais" on 11 March 1992 and on Noubir El Amaoui's trade union activity, in contravention of his right to freedom of expression and association.

6. The source also states that article 400 of the Code of Criminal Procedure applies to offences under ordinary law, whereas the proceedings against Noubir El Amaoui pertains to a press offence, for which article 76 of the Code of Criminal Procedure prohibits arrest. The proceedings are also said to have involved many irregularities: Noubir El Amaoui's lawyers, for example, were forbidden free entry to the courtroom.

7. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Morocco. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

8. It is apparent from the facts as described above that Noubir El Amaoui has been in detention for more than a year simply because he peacefully exercised his rights to freedom of opinion and expression and freedom of association, these rights being guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights. This justifies the following decision.

9. In the light of the above, the Working Group decides the following:

> The detention of Noubir El Amaoui is declared to be arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights, and falls within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

10. Consequent upon the decision declaring the detention of Noubir El Amaoui to be arbitrary, the Working Group requests the Government of Morocco to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 22/1993 (NIGERIA)

Communication addressed to the Government of Nigeria on 6 November 1992.

Concerning: Mr. Femi Falana, on the one hand, and the Federal Republic of Nigeria, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than 90 days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. According to the communication, a summary of which has been transmitted to the Government of Nigeria, Femi Falana, an attorney, President of the National Association of Democratic Lawyers, Vice-President of the Committee for the Defence of Human Rights and a member of the Campaign for Democracy, resident of Lagos, Nigeria, was arrested without a warrant on 19 May 1992 at Ikeja High Court, Lagos, by the Nigerian State Security Service (SSS) and was accused of conspiring, along with others, to compel a change in government policies, particularly the Government's "transition to civil rule" programme, by overt acts including holding illegal meetings and issuing seditious pamphlets.

5. Femi Falana was reportedly held incommunicado at a Lagos jail. Shortly after his arrest, and pursuant to a habeas corpus application, the Lagos State High Court allegedly ordered that he be released, stating that his detention was "illegal, unconstitutional, null and void". Despite this order he was reportedly brought on 15 June 1992 before a magistrate's court in Gwagwalade (550 miles from Lagos) and charged with conspiracy and treason under section 97 412 (1) (b) of the Penal Code of Nigeria.

6. On 29 June 1992, Femi Falana was reportedly released on bail. A trial date was reportedly set for 23 October 1992. According to the source, Femi Falana has been repeatedly harassed, arrested and/or detained by Nigerian security forces in the past several years, owing to his political, legal, civic and human rights activities, and he was in danger of continuing to be subjected to harassment and to arbitrary arrest and/or detention.

7. The Working Group has no information on the trial which was scheduled for 23 October 1992. On the other hand, the source lists a whole series of measures to which Femi Falana has been subjected:

(a) Arrest and detention for 24 hours in June 1989;

(b) Questioning on 10 April 1990 and release on the same day, outside Lagos;

(c) Questioning on 11 May 1990 concerning a case of corruption in which the name of the wife of the President of Nigeria was mentioned;

(d) Questioning on 26 May 1991 after his return from the United States, and release on the same day;

(e) Illegal search of Femi Falana's office without a warrant and in his absence on 30 May 1991;

(f) Search of his residence on 14 July 1991, begun at 4 a.m. in his absence; the members of the SSS tried to arrest his wife but were thwarted thanks to the assistance of neighbours; during the search pressure was exerted on Femi Falana to give up his defence of a client in the case in which the name of the President's wife had been mentioned;

(g) Confiscation of Femi Falana's passport on 9 October 1991 at Lagos airport when he was on his way to Zimbabwe; three days later he was interrogated at the SSS for two days concerning the same corruption case; his passport was not returned to him.

8. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Nigeria. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

9. It is apparent from the facts as described above that Femi Falana was detained from 19 May to 29 June 1992, the day when he was released on bail, solely for having peacefully exercised his right to freedom of expression and opinion, his right to freedom of peaceful assembly and association, and his right to exercise his profession as an attorney. These rights are guaranteed by articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights. It is also apparent that his detention between 19 May and 29 June was ordered only because of his above-mentioned activities, that this persecution is continuing, and that the fears expressed by the source that they may continue in the future are justified. This persecution to which Femi Falana has been subjected, represents non-observance of international norms which prohibit such actions against the individual, namely, articles 3, 9, 12 and 13 of the Universal Declaration of Human Rights and articles 9, 12, 14 and 17 of the International Covenant on Civil and Political Rights. In accordance with paragraph 14 (a) of its methods of work, the Working Group considers that the violation by the Nigerian authorities of articles 19, 20 and 21 of the

Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights justifies the following decision.

10. In the light of the above, the Working Group decides:

> The detention of Femi Falana is declared to be arbitrary, being in contravention of articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

11. Consequent upon the decision of the Working Group declaring the detention of Femi Falana to be arbitrary, the Working Group requests the Government of Nigeria to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 23/1993 (ETHIOPIA)

Communication addressed to the Government of Ethiopia on 1 July 1992.

Concerning: Mr. Yohannes Gurmessa Sufae, on the one hand, and Ethiopia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than 90 days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. According to the communication, a summary of which has been transmitted to the Government of Ethiopia, Yohannes Gurmessa Sufae, a former military officer, aged 54, was arrested at a friend's home in Addis Ababa on 27 March 1992, by some 20 armed soldiers without any warrant. He was currently said to be detained at Sandaffa Police College, 40 kilometres from Addis Ababa. The reasons given by the authorities for Colonel Yohannes' detention were reportedly his failure to comply with the demobilization process by escaping from a demobilization camp, when the screening of ex-officers suspected of war crimes and embezzlement under the former regime was going on, and the training of soldiers of the Oromo Liberation Front (OLF). According to the source, Colonel Yohannes had valid medical papers attesting his inability to remain at the demobilization camp due to health reasons, and there is no law against the "non-completion" of rehabilitation formalities. As to the second reason invoked for the detention, the source denied the accusation that Colonel Yohannes was involved in training of soldiers of the OLF and affirmed that the OLF was a legal political party in the Transitional Government of Ethiopia, and membership thereof cannot be considered an illegal act.

5. The source later informed the Working Group that the Ethiopian authorities had acknowledged the escape from the demobilization camp and the training of OLF soldiers as grounds for Yohannes Gurmessa Sufae's arrest and detention. Nevertheless, the authorities did not indicate the legislation under which that decision was taken and did not give any specific details concerning the charges against him or the proceedings for a judicial inquiry, or the reasons for his continued detention. According to the source, the Ethiopian authorities declared that the acts with which Yohannes Gurmessa Sufae was charged were illegal, but did not indicate the

charge which was the subject of the judicial inquiry or whether the inquiry had been opened, or even whether the two acts with which he was charged constituted criminal offences.

6. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Ethiopia. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

7. It is apparent from the facts as described above that Yohannes Gurmessa Sufae has been held in detention for more than 13 months now without charge or trial - in violation of his rights as guaranteed by articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights, and principles 2 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The non-observance of the above-mentioned articles and principles relating to a fair trial is sufficiently serious to warrant the following decision.

8. In the light of the above, the Working Group decides:

> The detention of Yohannes Gurmessa Sufae is declared to be arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of Yohannes Gurmessa Sufae to be arbitrary, the Working Group requests the Government of Ethiopia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 24/1993 (LIBYAN ARAB JAMAHIRIYA)

Communication addressed to the Government of the Libyan Arab Jamahiriya on 6 November 1992.

Concerning: Rashid Abdal-Hamid al-Urfia, on the one hand, and the Libyan Arab Jamahiriya, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than 90 days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. According to the communication, a summary of which has been transmitted to the Government of the Libyan Arab Jamahiriya, Rashid Abdal-Hamid al-Urfia, aged 39, was arrested in February 1982 in Benghazi, accused of being a founder and a leader of an illegal religious opposition group which had allegedly planned to overthrow the Libyan Government. He was arrested together with 20 other persons, said to be his associates, but the others have since been released from prison. Until 1984 he was detained in Tripoli Central Prison and was then transferred to Ab Salim Prison in Tripoli, where he is believed to be currently detained.

5. According to the source, Rashid Abdal-Hamid al-Urfia is believed to be detained under Revolutionary Command Counsel Decision of 11 December 1969, which reportedly prohibits all forms of political opposition, including peaceful activities.

6. Rashid Abdal-Hamid al-Urfia has allegedly not been formally charged or tried.

7. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Libyan Arab Jamahiriya. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

8. It is apparent from the facts described above that Rashid Abdal-Hamid al-Urfia has been held in detention for more than 11 years now solely for having peacefully exercised his rights to freedom of thought, conscience and religion, to freedom of opinion and expression, and to freedom of peaceful association, these rights being guaranteed by articles 18, 19 and 20 of the

Universal Declaration of Human Rights and articles 18, 19 and 22 of the International Covenant on Civil and Political Rights. It is also apparent that his detention for 11 years without charge or trial constitutes a serious violation of his right to a fair trial and that the non-observance of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights guaranteeing the right to such a trial is so serious as to warrant the following decision.

9. In the light of the above, the Working Group decides:

> The detention of Rashid Abdal-Hamid al-Urfia is declared to be arbitrary, being in contravention of articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19 and 22 of the International Covenant on Civil and Political Rights, as well as articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

10. Consequent upon the decision of the Working Group declaring the detention of Rashid Abdal-Hamid al-Urfia to be arbitrary, the Working Group requests the Government of the Libyan Arab Jamahiriya to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 25/1993 (HAITI)

Communication addressed to the Government of Haiti on 6 November 1992.

Concerning: Mr. Bernard Benoît, Mr Pierre-Charles Douze and Mr. Roger Cadichon, on the one hand, and the Republic of Haiti, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of temporary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government in respect of the cases in question. With the expiry of ninety (90) days since the transmittal of its letter, the Working Group is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. According to the communication, which was transmitted to the Government of Haiti, Bernard Benoît and Pierre-Charles Douze, both of them lawyers, were arrested on 15 December 1991 in Arcahie, Haiti, by members of the Haitian armed forces. Their place of detention is unknown. Roger Cadichon, justice of the peace, living in Hinche, is said to have been arrested on 2 December 1991 in his town, without an arrest warrant, by soldiers of the Haitian Army. He is being held incommunicado in the Hinche municipal jail. The reason for their arrest and detention is reportedly the fact that they belong to a group which is calling for the return of Jean-Bertrand Aristide, the deposed President of Haiti.

5. According to the source, the above-mentioned persons are being held without charge or trial, notably in violation of the Haitian Constitution, whereby a person in custody must be charged within 48 hours of his arrest or must be released, and whereby everyone is entitled to a fair and public hearing. Furthermore, these persons have been deprived of the assistance of lawyers.

6. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Haiti. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

7. It is apparent from the facts as described above that Bernard Benoît, Pierre-Charles Douze and Roger Cadichon have been held in detention for more than 16 months simply for peacefully exercising their right to freedom of expression and opinion, a right guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on

Civil and Political Rights. It is also apparent that being held without charge or trial is not in conformity with the provisions of the Haitian Constitution. Hence, they have been denied the right to a fair hearing. Non-observance of principles 2, 9, 11, 13, 15, 16, 17, 18, 19, 31, 32, 33, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights guaranteeing the right to a fair hearing is of such seriousness that it warrants the following decision.

8. In the light of the above, the Working Group decides:

> The detention of Bernard Benoît, Pierre-Charles Douze and Roger Cadichon is declared to be arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights as well as articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights and principles, 2, 9, 11, 13, 15, 16, 17, 18, 19, 31, 32, 33, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and falls within categories II and III of the principles applicable in the consideration of the cases submitted to the Group.

9. Consequent upon the decision declaring the detention of Bernard Benoît, Pierre-Charles Douze and Roger Cadichon to be arbitrary, the Working Group requests the Government of Haiti to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 26/1993 (ISRAEL)

Communication addressed to the Government of Israel on 6 November 1992.

Concerning: Ahmad Qatamesh, on the one hand, and the State of Israel, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Israel. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Ahmad Qatamesh, a writer, from al-Bireh, Ramallah District, was allegedly arrested on 1 September 1992 by military and General Security Service (GSS) personnel. He is currently held in Ramallah prison, reportedly under interrogation by GSS agents in relation to his alleged activity as a leading member of the Popular Front for the Liberation of Palestine (PFLP).

6. It is alleged that Mr. Qatamesh was detained incommunicado, denied access to his advocate and family members, for 23 days. Allegedly, he was first brought before a military judge only on 10 September 1992, on his application for bail. At the hearing, conducted in a special closed session, his advocate was excluded by GSS order. On 12 September 1992 Mr. Qatamesh was brought before a military judge for extending his detention at the instance of the GSS. A 30-day extension was ordered. The alleged evidence was presented as "classified material" and as such not made available either to Mr. Qatamesh or his advocate. Subsequently access to legal advice remained restricted; advocate's visits, apart from being allowed for short durations, were also delayed. On a further hearing for extension of detention on 25 October 1992, the detention was extended for a further 25 days. Again the evidence presented remained classified. It is alleged that the whole purpose of Mr. Qatamesh's detention is to extract a confession by torture and denial of adequate medical care rather than to investigate in good faith the allegations made.

7. In November 1992 a charge sheet was allegedly presented. On 3 December 1992 Mr. Qatamesh, on a motion made by his advocate, was granted bail which was reversed in appeal.

8. The practice of incommunicado detention, which under military orders, can extend to a period of 30 days, denies the detainee access to any domestic procedure in court for a review. Under orders of a military court this period can be further extended by 60 days during which period again the detainee has no avenue of redress, judicial or otherwise, to challenge the legality of the detention. The presentation of classified material in closed session, denying access to the material relied upon and to counsel, leaves the detainee without any effective remedy.

9. Restricted visits and accessibility to advocate, lack of adequate time and facilities for defending the detainee and the inability to freely communicate with counsel, all go to render the detention arbitrary.

10. In the light of the above the Working Group decides:

> The detention of Ahmad Qatamesh is declared to be arbitrary being in contravention of articles 5, 9 and 11 of the Universal Declaration of Human Rights, and articles 7, 9 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

11. Consequent upon the decision of the Working Group declaring the detention of Ahmad Qatamesh to be arbitrary, the Working Group requests the Government of Israel to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 27/1993 (PHILIPPINES)

Communication addressed to the Government of the Philippines on 6 November 1992.

Concerning: Dioscoro Pendor, Teopanes Ilogon and Fermín Quiaman, on the one hand, and the Philippines, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Philippines. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The facts as disclosed indicate that Dioscoro Pendor, Teopanes Ilogon and Fermín Quiaman were all arrested without a warrant. In the case of Dioscoro Pendor who was arrested on 23 August 1991, he has not only till date not been informed of the reasons for his arrest, but no charges have been filed against him. He allegedly remains in detention at the Daet Provincial Jail. Teopanes Ilogon was arrested without warrant on 30 July 1987 by members of the Integrated National Police/Philippines Constabulary (PC/INP) and of the Civilian Home Defence Force (CHDF), at Upper Sapong, Lagonglong, Misamis Oriental. He is reportedly detained at Provincial jail, Cagayan De Oro City, charged with murder and kidnapping. After having been held incommunicado for four days he was able to see his lawyer only after three months. Despite the completion of his trial till date no verdict has been pronounced. In the case of Fermín Quiaman he was allegedly arrested on 27 January 1989 by the PC/INP at Cogon Public Market, Lagayan De Oro City, charged with two counts of murder. The source asserts that Fermín Quiaman is a victim of mistaken identity. He was allegedly not informed of the charges against him, was held incommunicado for five days and subjected to torture during that time. The charges having been filed against him, his habeas corpus petition was dismissed as not maintainable.

6. The practice of detaining a person without a warrant enables the authorities to subsequently justify the arrest. In normal circumstances a preliminary inquiry should precede the arrest, entitling the authority to

effect it in justifiable grounds. The facts as alleged do not demonstrate any reason to deviate from the normal procedure of effecting an arrest after inquiry. The practice of arresting persons without warrant, represents a pattern of conduct (see Decision No. 3/1993 (Philippines)) which could render the detentions arbitrary in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

7. In the case of Dioscoro Pendor, he has till date not been charged with any offence. He has clearly suffered administrative detention for an obviously abusive period of time. There is nothing to suggest that Dioscoro Pendor, during the period of his detention, has had recourse to any procedure whereby his detention has been subjected to review by a domestic tribunal or in a court of law. Absence of such safeguards further renders the detention arbitrary in contravention of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights.

8. Teopanes Ilogon, who was arrested without warrant, could see his lawyer only after three months after his arrest. This was a denial of his right to be assisted by legal counsel. His detention is in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

9. In the case of Fermín Quiaman, his allegation that he was held incommunicado for five days and subjected to torture during that time has not been denied. Subjection to torture, cruel, inhuman or degrading treatment would render such a detention arbitrary, in violation of articles 5 and 10 of the Universal Declaration of Human Rights and articles 7 and 14 of the International Covenant on Civil and Political Rights.

10. In the light of the above the Working Group decides:

> The detention of Dioscoro Pendor is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.
>
> The detention of Teopanes Ilogon is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.
>
> The detention of Fermín Quiaman is declared to be arbitrary being in contravention of articles 5, 9 and 10 of the Universal Declaration of Human Rights, and articles 7, 9 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

11. Consequent upon the decision of the Working Group declaring the detention of Dioscoro Pendor, Teopanes Ilogon and Fermín Quiaman to be arbitrary, the Working Group requests the Government of the Philippines to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 28/1993 (REPUBLIC OF KOREA)

Communication addressed to the Government of the Republic of Korea on 6 November 1992.

Concerning: Chang Ui-gyun, Hwang Tae-kwon and Kim Song-man, on the one hand, and the Republic of Korea, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Republic of Korea. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Chang Ui-gyun, a publisher, was reportedly arrested by Defence Security Command on 5 July 1987 in Seoul. Initially he was reportedly sentenced under the National Security Law, to 15 years' imprisonment which was reduced to 8 years in appeal in the High Court in 1988. Chang Ui-gyun was charged with passing secret information on the anti-government movement and opposition parties under instructions from a North Korean agent, seeking to infiltrate the dissident movement, and intending to disrupt the Olympic Games and the presidential elections scheduled to be held at the end of 1987. Chang Ui-gyun was apparently arrested without a warrant, which was issued eight days after arrest. He was allegedly denied access to his family and lawyers from 5 July 1987 till 29 August 1987, when he was indicted.

6. Hwang Tae-kwon was reportedly arrested in early June 1985 in Seoul by agents of the Agency for National Security Planning. Initially held by the said agency he was after trial sent to Andong prison. In January 1986 he was reportedly sentenced to life imprisonment under National Security Law which in December 1988, under a presidential amnesty, was reduced to 20 years. He was reportedly charged and convicted of anti-State and espionage activities, accused of contributing articles to a New York-based Korean language newspaper and associating with and receiving espionage training from the newspaper's publisher - an alleged North Korean "collaborator". The only basis for his conviction is an alleged confession which was allegedly extracted under torture.

7. Kim Song-man was allegedly arrested in Seoul on 6 June 1985 under National Security Law and is currently held at Taejon Prison. He was reportedly accused of spying for North Korea and encouraging student activists to engage in anti-government activities. In January 1986 he was sentenced to death. In December 1988 it was commuted to life imprisonment under presidential amnesty. The only basis for his conviction is an alleged confession which was allegedly extracted under torture.

8. In the case of Chang Ui-gyun the source admits that he transmitted information to the main South Korean opposition political parties and dissidents and to a South Korean dissident who lives in Japan. This information is said to have included descriptions of political rallies, including one held in Inchon on 3 May 1986, at which many leading dissidents were arrested, and information on the setting up of the National Council for a Democratic Constitution which organized mass demonstrations in support of a revision of the presidential election system in June 1987. There is no evidence on record to support the charges of espionage against Chang Ui-gyun. The evidence irresistibly suggests that Chang Ui-gyun was arrested for his political views and activities, in contravention of articles 19 and 21 of the Universal Declaration of Human Rights, and articles 19 and 21 of the International Covenant on Civil and Political Rights.

9. Allegations of torture during interrogation and denial of access to family and counsel for 25 days have also not been denied, being in contravention of articles 5 and 9 of the Universal Declaration of Human Rights, and articles 7, 14 and 19 of the International Covenant on Civil and Political Rights.

10. In the case of Hwang Tae-kwon, he too was admittedly involved in criticizing the Government. He was part of the student movement, but denied the accusation that he was a communist. The evidence of the confession, the only basis for his conviction, is also suspect. After his arrest he was held incommunicado and interrogated for 60 days. This, coupled with the fact that there is no independent corroborative evidence of his involvement in espionage activities lends further doubts to the veracity and legality of the alleged confession. He too seems to be a victim of his political views and activities. His detention is in contravention of articles 5, 9, 19 and 21 of the Universal Declaration of Human Rights, and articles 7, 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights.

11. The evidence of the confession, the only basis for the conviction of Kim Song-man, is also suspect. After his arrest in June 1985 he was allegedly held incommunicado till 5 August 1985 during which time he is alleged to have been tortured and forced to sign a confession. This, coupled with the fact that there is no independent corroborative evidence of his involvement in espionage activities, lends further doubts to the veracity and legality of the alleged confession. He also seems to have been convicted for his political views and activities. His detention is in contravention of articles 5, 9, 19 and 21 of the Universal Declaration of Human Rights, and articles 7, 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights.

12. In the light of the above the Working Group decides:

> The detention of Chang Ui-gyun, Hwang Tae-kwon and Kim Song-man is declared to be arbitrary being in contravention of articles 5, 9, 19 and 21 of the Universal Declaration of Human Rights, and articles 7, 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

13. Consequent upon the decision of the Working Group declaring the detention of Chang Ui-gyun, Hwang Tae-kwon and Kim Song-man to be arbitrary the Working Group requests the Government of the Republic of Korea to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 30/1993 (PHILIPPINES)

Communication addressed to the Government of the Philippines on 8 April 1992.

Concerning: Reynaldo Bernardo, Francis Bundaco, Rolando Datoon, Eduardo Diolola, Mario Flores, Eliezer Hemongala, Juanito Itaas, Antonio Lacaba, Rogelio Laurella, Virgilio Maceda, Alejandro Mandamian, Federico Marizana, Dionoro Miniao, Hermes Nayona, Joseph Obedencio, Joseph Olayer, Mauricio Paas Jr., Claudio Pérez, Honesto Pesimo Jr., Panfilo Ricablanca, Jerry Robilon, Nathaniel Jonathan Sallacay Jr., Francisco Salle, Ruben Tan-Awon, and Rogelio Tupas on the one hand, and the Philippines, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question except in the case of Francisco G. Salle Jr. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Philippines. In the absence of any information from the Government, except to the extent indicated in paragraph 2 hereinabove, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The source in its communication of 18 June 1992 informed the Working Group that Nathaniel Jonathan Sallacay and Alejandro Mandamian were released after their acquittal on 1 June 1992. Pánfilo Ricablanca and Rogelio Tupas were also released after their acquittal on 24 March 1992 and September 1992 respectively. The source, on 4 September 1992, has also informed the Working Group that both Antonio Lacaba and Virgilio Maceda were released on bail in August 1992, and, on 21 December 1992, that Honesto Pesimo Jr. has also been released on bail.

6. Instead of filing the cases in respect of Nathaniel Jonathan Sallacay, Alejandro Mandamian, Panfilo Ricablanca, Rogelio Tupas, Antonio Lacaba, Virgilio Maceda and Honesto Pesimo, in terms of paragraph 14 (a) of the

Methods of Work adopted by the Working Group, it has, despite their release, decided to render its decision since the cases of each of the persons concerned, along with others not released thus far, involves the settlement of certain questions of principle.

7. In the case of:

Reynaldo Bernardo; he was allegedly arrested without a warrant on 4 November 1990, in Quezon City. He was allegedly transferred to PNP Jail Camp Crame in Quezon City where he allegedly remains in detention, charged with violation of P.D. 1866.

Francis Bundaco; he was allegedly arrested without a warrant on 24 April 1990 at Lala, Lanao del Norte. He was not informed of the reasons for his arrest. He allegedly remains in detention at Lanao del Norte Provincial Jail, charged with being a member of the New People's Army and murder.

Rolando Datoon; he was allegedly arrested without a warrant on 27 November 1989 at his home. He was not informed of the reasons for his arrest. He was allegedly taken to the Municipal Jail of E.B. Mangalona on 29 November 1989 where he remains in detention on charges of double murder.

Eduardo Diolola; he was allegedly arrested without a warrant on 24 April 1990 at Lanipao, Lanao del Norte. He was not informed of the reasons for his arrest. He allegedly continues to be in detention at Lanao del Norte Provincial Jail, charged with being a member of the New People's Army and murder.

Mario Flores; he was allegedly arrested without a warrant on 7 August 1990 at his home. He was not informed of the reasons for his arrest. Since 4 October 1990 he allegedly continues to be in detention at the Provincial Jail on charges of kidnapping with serious illegal intention.

Eliezer Hemongala; he was allegedly arrested without a warrant on 23 April 1991 at Kolambugan, Lanao del Norte. He allegedly continues to be in detention at Lanao del Norte Provincial Jail, charged with being a member of the New People's Army and robbery of firearms with multiple homicide. He was allegedly denied visits by his family during two weeks and was not granted access to legal counsel during two months. Charges against him were allegedly filed only one month after his arrest.

Juanito Itaas; he was allegedly arrested without a warrant on 27 August 1989 at Davao City. He was not informed of the reasons for his arrest. He was allegedly taken to the PNP Jail Camp Crame in Quezon City where he continues to be in detention, charged with violation of P.D. 1866, murder and frustrated murder.

Antonio Lacaba; he was allegedly arrested without a warrant on 29 July 1991 in Novaliches, Quezon City, by Major Hernando Zafra. He was not informed of the reasons for his arrest. He was allegedly taken to the PNP Jail Camp Crame in Quezon City charged with violation of P.D. 1866 and subversion.

Rogelio Laurella; he was allegedly arrested without a warrant on 16 August 1989 at his home by 16 military men led by Sgt. Castillo of the 331st PC Company. He was not informed of the reasons for his arrest. Since 18 September 1989 he continues to be in detention at the Provincial Jail on charges of arson.

Virgilio Maceda; he was allegedly arrested under a search warrant on 29 July 1991 near his home, by security personnel under the command of Lt. Col. Robert Delfin. Allegedly no arrest warrant was shown. He was allegedly transferred to the PNP Jail in Quezon City on 7 August 1991 under a detention order issued by the Police Intelligence Security Group (PISG). He was charged with violation of P.D. 1866, murder, kidnapping with serious illegal intention and subversion.

Alejandro Mandamian; he was allegedly arrested without a warrant on 6 September 1990 at Iligan City. He was detained at Iligan City Jail, charged with violation of R.A. 1700. His lawyers were allegedly not granted access to him during 12 days.

Federico Martizano; he was allegedly arrested without a warrant on 6 July 1990 in Bago City. He was allegedly not informed of the reasons for his arrest. When on 6 August 1990 he was due to be released he was apparently re-arrested. He was taken to the Provincial Jail on 28 November 1990 where he continues to be in detention on charges of subversion.

Dionoro Miniao; he was allegedly arrested without a warrant on 3 December 1990 at Kolambugan, Lanao del Norte. He was not informed of the reasons for his arrest. He was allegedly transferred to San Ramon Penal Colony, Zamboanga City, where he remains in detention on charges of multiple murder.

Hermes Nayona; he was allegedly arrested without a warrant on 20 September 1990 at Maigo, Lanao del Norte and he continues to be in detention at San Ramon Penal Colony, Zamboanga City, charged with violation of P.D. 1866 and multiple murder. His lawyers were allegedly denied access to him during 10 days.

Joseph Obedencio; he was allegedly arrested without a warrant on 1 May 1991 at Kolambugan, Lanao del Norte, and transferred to Lanao del Norte Provincial Jail where he continues to be in detention on charges of being a member of the New People's Army and robbery of firearms with multiple homicide. His lawyers were allegedly denied permission to visit him until 17 May 1991.

Joseph Olayer; he was allegedly arrested without a warrant on 9 July 1991 at North Harbor, Tondo, Manila. Until 23 September 1991 he was allegedly held at the ISAFP headquarters in an isolation cell. On that day he was transferred to the PNP Jail in Quezon City where he continues to be in detention, charged with violation of P.D. 1866, multiple frustrated murder, multiple murder and arson. He was allegedly denied access to his lawyer for one month.

Maurizio Paas Jr.; he was arrested without a warrant on 30 July 1991. He continues to be in detention since 5 August 1991 at the PNP Jail Camp Crame in Quezon City, charged with violation of P.D. 1866 on account of material found when his house was searched the day after the arrest.

Claudio Pérez; he was arrested without a warrant on 26 May 1991 at his home by military personnel under the command of Sgt. Flores, who shot Claudio's neighbour to death. Claudio was ordered to take the body to the Biao Detachment from where he was allegedly not allowed to leave. He was allegedly transferred to the Municipal Jail of Binalbagan on 3 June 1991 after his attorney had written a letter on 31 May 1991 requesting his release. It was only then that charges of kidnapping with serious illegal intention were allegedly filed against him. He continues to be in detention since 21 June 1991 at the Provincial Jail.

Honesto Pesimo Jr.; he was arrested without a warrant on 12 May 1990 at Tunsuya Malabon, Metro Manila, where he was allegedly tortured in order to force him to admit that he was a rebel. He allegedly was in detention at the PNP Jail Camp Crame in Quezon City, charged with violation of P.D. 1866, murder and frustrated murder.

Panfilo Ricablanca; he was arrested without a warrant on 4 November 1991 at Iligan City Jail on charges of being a hit man of the New People's Army in violation of R.A. 1700 and P.D. 1866.

Jerry Robilon; he was arrested without a warrant on 2 August 1989 at Murcia Proper, by military personnel under the command of Sgt. Nono Pedero. He was transferred to the Provincial Jail on 18 September 1989 where he continues to be in detention, charged with arson.

Nathaniel Jonathan Sallacay Jr.; he was arrested without a warrant on 6 September 1990 at Iligan City. His lawyers were not allegedly allowed to visit him until 18 September 1990. He allegedly was in detention at Iligan City Jail, charged under the Anti-Subversion Act R.A. 1700 with being an illegal recruiter and organizer of the Communist Party of the Philippines and the New People's Army.

Francisco Salle; he was arrested without a warrant on 7 April 1990 in Galas, Quezon City, by security personnel under the command of Col. George Alino. He was allegedly transferred to PNP Jail Camp in Quezon City where he continues to be in detention, charged with murder and arson.

Ruben Tan-Awon; he was arrested without a warrant on 4 December 1991 at Kolambugan, Lanao del Norte. His family was allegedly not allowed to visit him during the first two weeks. He allegedly continues to be in detention being a member of the New People's Army. These charges were not filed against him until twenty (20) days after his arrest.

Rogelio Tupas; he was arrested without a warrant on 24 December 1989 at Sagay Proper. He allegedly was in detention at the Provincial Jail, charged with murder.

8. The facts as alleged in the case of Reynaldo Bernardo, Francis Bundaco, Rolando Datoon, Eduardo Diolola, Mario Flores, Eliezer Hemongala, Juanito Itaas, Antonio Lacaba, Rogelio Laurella, Virgilio Maceda, Alejandro Mandamian, Federico Martizano, Dionoro Miniao, Hermes Nayona, Joseph Obedencio, Joseph Olayer, Mauricio Paas Jr., Claudio Perez, Honesto Pesimo Jr., Panfilo Ricablanca, Jerry Robilon, Nathaniel Jonathan Sallacay Jr., Francisco Salle, Ruben Tan-Awon, and Rogelio Tupas indicate that each of them was arrested without a warrant. Pursuant to his arrest each was charged for the commission of offences. The facts further indicate that each at the time of his arrest was not informed of the reasons for the arrest. The practice of first arresting a person without warrant and thereafter charging him with commission of offences is one which enables the authorities to justify the arrest on grounds which did not exist at the time of the arrest.

9. Rule 113 of the Philippines Rules of Criminal Procedure entitles, under Section 5, certain Peace Officers or a private person to arrest a person without a warrant in three circumstances. These are:

(a) When in the presence of the person seeking to effect the arrest, the person to be arrested has committed, is actually committing, or is attempting to commit an offence;

(b) When an offence has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgement or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

10. In cases falling under the first two categories hereinabove the person arrested without a warrant is required under the law to be forthwith delivered to the closest police station or jail and thereafter is required to be prosecuted against in accordance with Rule 112, Section 7.

11. The facts indicated in each of the cases concerning each of the individuals named herein do not indicate that the arrests were effected while the person arrested had either committed or was actually committing or attempting to commit an offence. Nor do the facts indicate that the person had been arrested in relation to offences of which he had personal knowledge indicating that the person to be arrested had committed the offence. The facts do not suggest that any of the persons arrested was at the time of

arrest in the process of committing an offence or had any personal knowledge of facts in respect of an offence which had been committed indicating his involvement in the commission of offences. Authorities have taken recourse to Rule 113 of the Philippines Rules on Criminal Procedure for effecting arrests without a warrant, without fulfilling the conditions precedent for the exercise of the said powers. The fact that each of those arrested was subsequently charged with commission of offences without establishing the necessary facts relating thereto, would not justify the initial arrest without a warrant.

12. In the case of Reynaldo Bernardo, Antonio Lacaba, Virgilio Maceda, Joseph Olayer, Mauricio Paas Jr., Honesto Pesimo Jr., and Panfilo Ricabalanca, each of them was charged for violation of P.D. 1866 which declares illegal the unlawful manufacture, sale, acquisition, disposition or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms or ammunition. It further creates a presumption of illegal manufacture of firearms or ammunition pursuant to possession of any machinery, tool or instrument used directly in the manufacture of firearms or ammunitions. The Decree seeks to impose a penalty of death on all those who in violation of the Decree unlawfully manufacture, assemble, acquire, dispose or possess explosives in connection with the crimes of rebellion, insurrection or subversion. What amounts to rebellion, subversion or insurrection is not defined in the Decree. The facts do not indicate that any of the said persons were involved in any such activity so as to justify his being charged under P.D. 1866. The pattern of arresting persons without a warrant and subsequent indictment by filing unsubstantiated charges against them indicates a pattern of conduct which is clearly arbitrary.

13. In the case of Francis Bundaco, arrested without a warrant, he has been charged with being a member of the New People's Army and murder. Reasons for his arrest were not disclosed to him at the time of effecting it. A similar allegation has been made in the case of Eduardo Diolola. Alejandro Mandamian, who was arrested without a warrant, was charged with violation of R.A. 1700. In terms of the said Act, Congress has declared the Communist Party of the Philippines to be an organization designed to overthrow the Government of the Republic of the Philippines by force, violence, deceit, subversion or other illegal means. Consequently the said Party has been declared to be illegal and outlawed. Alejandro Mandamian, who was arrested without a warrant, was charged under the said Republic Act, he being a member of the Communist Party of the Philippines. Hermes Nayona, who was arrested without a warrant, apart from being charged with gross violation of P.D. 1866 was also subsequently charged with multiple murder. Joseph Obedencio, who was arrested without a warrant, was charged subsequently with being a member of the New People's Army and robbery of firearms with multiple homicide. Joseph Olayer, who was arrested without a warrant, apart from being charged subsequently for violation of P.D. 1866, was also subsequently charged with multiple frustrated murder, multiple murder and arson. Honesto Pesimo Jr., who was arrested without a warrant, apart from a subsequent charge under P.D. 1866 was also subsequently charged with multiple and frustrated murder. Panfilo Ricablanca, who was arrested without a warrant, was subsequently charged, apart from violation of P.D. 1866, also for violation of R.A. 1700, apparently being a member of the Communist Party of the Philippines. Jonathan Sallacay Jr., who was arrested without a warrant, was subsequently

charged under R.A. 1700 being a recruiter and organiser of the Communist Party of the Philippines and the New People's Army. Ruben Tan-Awon, who was arrested without a warrant, was subsequently charged with being a member of the New People's Army, charges which were filed twenty (20) days after his arrest.

14. The arrests of persons without warrant, without informing them of the reasons for their arrest, in violation of Rule 113 of the Philippines Rules of Criminal Procedure, and subsequent filing of charges, is violative of a persons's right to life, liberty and security of person and consequently is in violation of articles 3 and 9 of the Universal Declaration of Human Rights. It is also in contravention of article 9 of the International Covenant on Civil and Political Rights.

15. In the case of Francis Bundaco, Eduardo Diolola, Eliezer Hemongala, Alejandro Mandamian, Pánfilo Ricablanca, Jonathan Sallacay Jr., and Ruben Tan-Awon, apart from the fact that their detention is arbitrary being violative of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, each of them was apparently arrested for holding opinions and being members of Parties politically opposed to the Party in power. Therefore their detention is considered to be in violation of article 19 of the Universal Declaration of Human Rights, and of article 19 of the International Covenant on Civil and Political Rights. Each of these articles entitles persons to hold opinions without interference. Each of these persons is entitled to freedom of expression and ought not to have been arrested for holding beliefs which they are and were entitled to hold under universally accepted principles. Persons who are the members of the Communist Party of the Philippines, even though declared to be unlawful under the R.A. 1700, cannot be arrested on that account.

16. In the case of Francisco G. Salle Jr., the information forwarded on 23 March 1993, related to certain proceedings before the Commission on Human Rights set up by the Government of the Philippines, which has little bearing on the contents of the communication dated 8 April 1992.

17. In the light of the above the Working Group decides:

(a) The arrest without warrant in the circumstances alleged, and despite the release of some of the persons concerned, in the case of Reynaldo Bernardo, Francis Bundaco, Rolando Datoon, Eduardo Dioiola, Mario Flores, Eliezer Hemongala, Juanito Itaas, Antonio Lacaba, Rogelio Laurella, Virgilio Maceda, Alejandro Mandamian, Federico Martizano, Dionoro Miniao, Hermes Nayona, Joseph Obedencio, Joseph Olayer, Mauricio Paas Jr., Claudio Perez, Honesto Pesimo Jr., Panfilo Ricablanca, Jerry Robilon, Nathaniel Jonathan Sallacay Jr., Francisco Salle, Ruben Tan-Awon, and Rogelio Tupas is declared to be arbitrary being in contravention of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The detention of Francis Bundaco, Alejandro Mandamian, Eduardo Diolola, Eliezer Hemongala, Panfilo Ricablanca, Nathaniel Jonathan Sallacay Jr. and Ruben Tan-Awon is also declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

18. Consequent upon the decision of the Working Group declaring the detention of Reynaldo Bernardo, Francis Bundaco, Rolando Datoon, Eduardo Diolola, Mario Flores, Eliezer Hemongala, Juanito Itaas, Rogelio Laurella, Federico Marizana, Dionoro Miniao, Hermes Nayona, Joseph Obedencio, Joseph Olayer, Mauricio Paas Jr., Claudio Pérez, Jerry Robilon, Francisco Salle and Ruben Tan-Awon to be arbitrary, the Working Group requests the Government of the Philippines to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

19. Having declared the detention of Antonio Lacaba, Virgilio Maceda, Alejandro Mandamian, Honesto Pesimo Jr., Panfilo Ricablanca, Nathaniel Jonathan Sallacay Jr., and Rogelio Tupas to be arbitrary, the Working Group requests the Government of the Philippines to take note of its decision and in the light thereof take such steps as are necessary to bring its actions and laws into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993

DECISION No. 31/1993 (AZERBAIJAN)

Communication addressed to the Government of Azerbaijan on 22 February 1993.

Concerning: Vilik Ilitch Oganessov and Artavaz Aramovitch Mirzoyan, on the one hand, and the Republic of Azerbaijan, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Azerbaijan. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. It was alleged in the communication from the source, a summary of which was transmitted to the Government, that: Vilik Ilitch Oganessov and Artavaz Aramovitch Mirzoyan, ethnic Armenian citizens of the Republic of Georgia, were reportedly arrested on 28 April 1992 at the airport of Baku, Azerbaijan when they arrived there in transit to the Georgian capital of Tbilissi, via Samara and Volgograd in Russia. It was alleged that Mr. Oganessov and Mr. Mirzoyan had not been charged with any criminal offences and that they were being held in conditions which may be described as those of hostages, solely on grounds of their ethnic origin in the hope that they could be exchanged for ethnic Azerbaijanis held by Armenians in the disputed region of Nagorno-Karabakh. It was further reported that the practice of hostage-taking of ethnic Armenians continued in Azerbaijan, often by private individuals seeking an exchange for one of their relatives held by the Armenian authorities in Nagorno-Karabakh.

6. It appears from the facts as described above that Vilik Ilitch Oganessov and Artavaz Aramovitch Mirzoyan were arrested on 28 April 1992 and detained since that date without charge, solely due to their ethnic origin. The Working Group is of the opinion that their detention, on such grounds, manifestly cannot be linked to any legal basis.

7. In the light of the above the Working Group decides:

> The detention of Vilik Ilitch Oganessov and Artavaz Aramovitch Mirzoyan is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 12 of the International Covenant on Civil and Political Rights and falling within category I of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Vilik Ilitch Oganessov and Artavaz Aramovitch Mirzoyan to be arbitrary, the Working Group requests the Government of Azerbaijan to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 28 September 1993

DECISION No. 32/1993 (UZBEKISTAN)

Communication addressed to the Government of Uzbekistan on 22 February 1993.

Concerning: Babur Alikhanovich Shakirov and Khazratkul Khudayberdi, on the one hand and the Republic of Uzbekistan, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Uzbekistan. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. It was alleged in the communication from the source, a summary of which was transmitted to the Government, that: Babur Alikhanovich Shakirov, born in 1948 and Khazratkul Khudayberdi, both members of the Birlik movement, the political opposition to the Government of President Islam Karimov, were reportedly arrested in Tashkent on 14 August and on 9 December 1992, respectively. They were said to be held at the investigation-isolation prison of the National Security Service in Tashkent. Both have reportedly been charged with "calling for the violent overthrow of the State and social system". Reportedly, in the case of Mr. Khudayberdi, article 60 of the Uzbekistan Criminal Code has been applied, which carries a possible sentence of up to seven years in prison: in the case of Mr. Shakirov the source did not know to which specific article in the Criminal Code the charge related, but expressed the fear that it may be article 54 - treason - which carried a possible death sentence. According to the source the charges were believed to be linked to the activities by the detainees in connection with the foundation of a non-violent social organization called Milli Mejlis ("National Council"). In 1968 (or 1970) Mr. Shakirov had reportedly been arrested and charged with treason and with anti-Soviet agitation and propaganda, which related to an illegal attempt to leave the USSR and to his nationalist activities, respectively. The source further alleged that Mr. Shakirov and Mr. Khudayberdi were being detained solely because of their non-violent activities in opposition to the Government of Uzbekistan.

6. It appears from the facts as described above that the arrest and detention of Babur Alikhanovich Shakirov and Khazratkul Khudayberdi are due solely to the fact that they have freely exercised their right to freedom of opinion and expression, a right which is guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights. Furthermore, there is no record that, in doing so, they used violence or in any way threatened national security, public order, or public health or morals, or that they failed to respect the rights or reputations of others, as provided for by article 29 (2) of the Universal Declaration on Human Rights and by article 19 (3) of the International Covenant on Civil and Political Rights.

7. In the light of the above the Working Group decides:

> The detention of Babur Alikhanovich Shakirov and Khazratkul Khudayberdi is declared to be arbitrary being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights and articles 9 and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Babur Alikhanovich Shakirov and Khazratkul Khudayberdi to be arbitrary, the Working Group requests the Government of Uzbekistan to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 28 September 1993

DECISION No. 33/1993 (ETHIOPIA)

Communication addressed to the Government of Ethiopia on 22 February 1993.

Concerning: Kassa Gebre and Yahehirad Kitaw, on the one hand, and Ethiopia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Ethiopia. The Working Group has taken into consideration the information contained in a note verbale dated 24 February 1993, sent by the Permanent Mission of the Transitional Government of Ethiopia to the United Nations Office at Geneva, which named eight detained former officials, including Yahehirad Kitaw, whose cases had been presented to the first Bench of the High Court. The latter reportedly asked the Prosecutor's Office to present the eight former officials to the Court the following Monday and to give an explanation of their arrest. Nevertheless, the Working Group cannot consider that information as constituting a reply to its communication to the Government dated 22 February 1993. In these circumstances, the Working Group believes that it is in a position to take a decision on these cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. It was alleged in the communication from the source, a summary of which was transmitted to the Government, that: Kassa Gebre, former Minister of Construction and member of the Politburo and Central Committee of the Workers Party of Ethiopia (WPE), and Yahehirad Kitaw, a medical doctor and former Minister of Education, and an alternate member of the Central Committee of the WPE, were reportedly arrested in June 1991 in Addis Ababa and were said to be detained in Sendafa Police College, near Addis Ababa. According to the source Mr. Gebre and Mr. Kitaw have been detained without charge or trial. They were said to belong to the group of 2,000 people who had been arrested since May 1991 for having connections with the Government of former President Mengistu, and who had been accused of human rights violations, war crimes and other abuses. Although it was reported that the authorities had stated that the detained officials were held on account of war crimes or human rights abuses, saying that they would receive fair trials in accordance with

international standards, no one had reportedly yet been formally charged with any offence. It was reported that the Government's security forces had been arresting and detaining people indefinitely without charge and without the detainee having the right to challenge the detention through any judicial or administrative procedure. It was further reported that most of the former officials were arrested after obeying instructions issued in early June 1991 to report to the new authorities on account of their position under the former Government and that this might imply that they were detained on account of collective responsibility for policies or abuses by the Government, the WPE or the armed forces, rather than on account of individual responsibility for particular criminal offences. Many detainees were said to have been released after their cases were investigated by the security authorities. According to the source, the continuing detention of the others was probably based on a general assessment of their official position with the former Government. Reportedly, in August 1992 a Special Procurator's Office was established to deal with these cases as the first step towards opening judicial proceedings against detainees, and legislation was being drafted regarding the judicial proceedings themselves. The decree reportedly declared that the right of habeas corpus was suspended for six months in relation to the cases of these detainees, but no time-limit was set for charging or trying the detainees.

6. It appears from the facts as described above that Kassa Gebre and Yahehirad Kitaw have been detained for over 2 years without charge or trial, thus being deprived of their rights guaranteed by articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights and Principles 2, 10 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The non-observance of the above-mentioned articles and principles relating to the right to a fair trial is such that it confers on the deprivation of freedom an arbitrary character, justifying the following decision by the Working Group.

7. In the light of the above the Working Group decides:

> The detention of Kassa Gebre and Yahehirad Kitaw is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights and Principles 2, 10 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Kassa Gebre and Yahehirad Kitaw to be arbitrary, the Working Group requests the Government of Ethiopia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 28 September 1993

DECISION No. 34/1993 (GREECE)*

Communication addressed to the Government of Greece on 22 February 1993.

Concerning: Dimitrios Tsironis, on the one hand, and the Hellenic Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.*

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Greece. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.*

5. Dimitrios Tsironis, aged 21 was reportedly arrested in March 1992 at the Army Camp in Kozani. Mr. Tsironis, who is a Jehovah's Witness, reportedly resisted serving in the armed forces in any capacity because of his religious beliefs. In the absence of any provision in Greece for performing alternative civilian service, in June 1992 Mr. Tsironis is said to have been sentenced to four years' imprisonment by the Military Court of Thessaloniki. During the first month of his imprisonment Mr. Tsironis was reportedly held in a disciplinary cell and was allegedly subjected to physical and psychological ill-treatment. He is currently said to be detained at Sindos Military Prison where he was reportedly transferred in April 1992. Greek law apparently allows those who object to military service on the ground of conscience to perform unarmed military service lasting twice as along as military service.

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* It may be noted that after the present decision was adopted, the Working Group received a detailed reply from the Government of Greece, dated 5 September 1993, on the case in question. The allegation of ill-treatment contained in the communication received from the source and transmitted to the Government, is firmly denied. The Government's reply was transmitted, together with the present decision, to the Special Rapporteur on the question of torture.

This seems to be unacceptable to Mr. Tsironis, since he believes that such service furthers military aims. It seems that those similarly situated as Mr. Tsironis, who refuse to do any form of military service are given four-year prison sentences which are reduced to about 30 months if they do prison work.

6. The facts suggest that Mr. Tsironis was subjected to physical and psychological ill-treatment in a disciplinary cell before he was transferred to Sindos Military Prison in April 1992. Such treatment is in violation of article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights. In respect of the posture of Mr. Tsironis that his religious beliefs entitle him to object to compulsory military service and do not permit him to perform unarmed military service, since such service furthers military aims, it is difficult to conclude that military service or unarmed military service is per se incompatible with the religious beliefs of Mr. Tsironis who is a Jehovah's Witness. Being a Jehovah's Witness does not confer on Mr. Tsironis a right to refuse on grounds of conscience to perform armed or unarmed military service.

7. In the light of the above the Working Group decides:

(a) The detention of Dimitrios Tsironis is declared not to be arbitrary.

(b) The Working Group decided furthermore, to transmit the information concerning the alleged ill-treatment to the Special Rapporteur on the question of torture.

Adopted on 29 September 1993

DECISION No. 35/1993 (SYRIAN ARAB REPUBLIC)*

Communication addressed to the Government of the Syrian Arab Republic on 22 February 1993.

Concerning: Mujalli Nasrawin, on the one hand, and the Syrian Arab Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Syrian Arab Republic. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Mr. Mujalli Nasrawin, born in 1939, a lawyer of Jordanian nationality, was reportedly arrested in 1970 and has since been held at Mazze prison in Syria. Mr. Nasrawin is said to have obtained his law degree from Damascus University, Syria. He worked in Jordan as a Justice of the Peace in 1967 and then returned to Syria where he joined the Arab Socialist Baath Party and became a member of its Syrian Executive. Reportedly two months after having visited Jordan for a period of 24 hours in 1970, he was imprisoned in Syria together with the former Syrian President Nureddin al-Atasi. Mr. Nasrawin has reportedly been held without charge or trial. He is said to be in extremely poor health and suffering from chronic ailments due to the conditions of detention.

6. The facts clearly suggest that Mr. Nasrawin has been detained only for his political views and opinions. The fact that he has not been charged since his arrest in 1970 and that no trial till date has taken place further proves the arbitrary nature of his detention. His poor health and chronic ailments are obviously the result of poor conditions of detention. In the circumstances, it is clear that Mr. Nasrawin's detention is in violation of

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* The Syrian Arab Republic addressed a reply to the above case, in Arabic, dated 12 October 1993.

articles 5, 9, 10, 18 and 19 of the Universal Declaration of Human Rights and articles 7, 9, 14, 18 and 19 of the International Covenant on Civil and Political Rights.

7. In the light of the above the Working Group decides:

(a) The arrest of Mr. Mujalli Nasrawin and his continued detention, without charge or trial, cannot be justified on any legal basis. It is declared to be arbitrary being in contravention of articles 5, 9, 10, 18 and 19 of the Universal Declaration of Human Rights and articles 7, 9, 14, 18 and 19 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is a party, and Principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. His continued detention in the absence of any charge or trial cannot further be justified on any legal basis, and falling within categories I, II and III of the principles applicable in the consideration of cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged poor conditions of detention to the Special Rapporteur on the question of torture.

8. Consequent upon the decision of the Working Group declaring the detention of Mr. Mujalli Nasrawin to be arbitrary, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1993

DECISION No. 36/1993 (INDONESIA)

Communication addressed to the Government of the Republic of Indonesia on 23 March 1993.

Concerning: Fernando de Araujo, on the one hand, and the Republic of Indonesia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Indonesia. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Fernando de Araujo, aged 27, was arrested on 24 November 1991 at his home in Denpasar, Bali, allegedly without a warrant, by a group of policemen and two plain clothes agents, following a search of his residence, during which the agents had allegedly planted explosives and grenades, which they later pretended to discover. The indictment against Araujo reportedly did not mention the discovery of explosives in his residence. He is reportedly a founding member and leader of the student movement "National Resistance of East Timorese Students" (Renetil). Mr. Araujo, who was held at Denpasar police headquarters until 22 December 1991 and then transferred to the Polda Metro Jaya Detention Centre in Jakarta until 3 March 1992, is since then believed to be detained at Salemba prison, Jakarta.

6. On 16 March 1992, Mr. Araujo was reportedly put on trial together with another East Timorese activist named Joao Freitas da Camara, both charged under the anti-subversion law for masterminding a demonstration in Jakarta, on 19 November 1991, in protest over the killing of dozens of demonstrators by Indonesian troops on 12 November 1991, at the Santa Cruz cemetery in Dili, East Timor; and for planning public demonstrations "to gain the sympathy of the international community for abuses of human rights in East Timor". Reportedly, Mr. Araujo was also charged for violation of articles 154 and 155 of the Indonesian Penal Code (KUHAP), for publicly expressing feelings of hostility, hatred or contempt towards the Government of Indonesia.

7. Mr. Araujo was sentenced to nine years' imprisonment. The indictment, which reportedly contained no evidence of his having used, advocated or incited violence, was said to be based largely upon the testimony of absent witnesses, who had testified in the presence of the police or other investigatory authorities or representatives of the prosecutor's office and whose testimony's veracity was not allowed to be impeached by Mr. Araujo. He is reported to have been subjected to beatings and solitary confinement prior to his trial. His detention and conviction allegedly stemmed from the fact that he had exercised his right to express his non-violent political opinions and organize a peaceful protest meeting.

8. The facts as set out above clearly suggest that Mr. Araujo has been victimized for expressing his non-violent political opinions. The fact that the indictment against him did not mention discovery of any explosives in his residence suggests that such explosives might have been planted with the intent to implicate him only for the purposes of arresting him. His arrest without a warrant, coupled with the attempt to implicate him falsely in the context of the fact that Mr. Araujo has not used, advocated or incited violence when peacefully demonstrating clearly suggests the arbitrary nature of his detention.

9. Mr. Araujo's conviction based on the testimony of witnesses who were not allowed to be cross-examined on account of their absence and whose statements made in the presence of police and other investigatory authorities were relied upon, suggests that the testimony itself is tainted. Some of the statements relied upon were made before other investigatory authorities or representatives of the prosecutor's office whose testimony was not also allowed to be impeached by Mr. Araujo. Reliance on such tainted testimony vitiates the trial and renders the continued detention of Mr. Araujo arbitrary. The fact that Mr. Araujo was subjected to beating and solitary confinement further points to the arbitrary nature of his detention. The facts, therefore, suggest that Mr. Araujo's detention and ultimate conviction is in violation of articles 5, 9, 19 and 20 of the Universal Declaration of Human Rights and articles 7, 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights.

10. In the light of the above the Working Group decides:

(a) The arrest of Fernando de Araujo and his continued detention upon conviction are unjustified and are declared to be arbitrary being in contravention of articles 5, 9, 19 and 20 of the Universal Declaration of Human Rights, articles 7, 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights and Principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged ill-treatment to the Special Rapporteur on the question of torture.

11. Consequent upon the decision of the Working Group declaring the detention of Fernando de Araujo to be arbitrary, the Working Group requests the Government of the Republic of Indonesia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1993

DECISION No. 38/1993 (MYANMAR)

Communication addressed to the Government of Myanmar on 10 December 1992.

Concerning: Win Tin, Tin Htut, Naing Naing, Khin Maung Thein, Min Zeya, Ye Htoon, Myo Myint Nyein and Sein Hlaing, on the one hand, and the Union of Myanmar, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Myanmar. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. It was alleged in the communication from the source, a summary of which was transmitted to the Government, that:

(a) Win Tin, born in 1930, a writer and journalist, resident of Lanmdaw Township, Yangon, was reportedly arrested without a warrant on 4 July 1989 in Yangon by agents of the Directorate of Defence Services Intelligence (DDSI), the military intelligence agency. The source alleged that his arrest was based mainly on his work with Aung San Suu Kyi in connection with her party, the NLD's non-violent strategy. On 3 October 1989 he was reportedly sentenced to three years hard labour under section 216 of the Penal Code by the Military Tribunal at Insein Central Prison, where he was detained. Mr. Win Tin was reportedly in a very serious state of health and on 19 November 1992 the Chairman of the Working Group addressed an urgent appeal to the Government of Myanmar on his behalf.

(b) Tin Htut, about 60 years old, resident at Mingalartaungnyunt Township, Yangon, was reportedly arrested without a warrant between the end of November and the beginning of December 1990 at his home by agents of the DDSI. Mr. Tin Htut was an elected member of parliament for Eirme-1 constituency and a member of the NLD Central Committee. It was alleged that his arrest stemmed from his activities in the NLD. It was believed that he was accused of taking part in anti-government activities and of conspiring to form a provisional government. He was reportedly sentenced to 20 years' imprisonment for high treason by the Military Tribunal in Yangon. He was said to be detained at Insein Prison.

(c) Naing Naing, resident of Pazundaung Township, Yangon, was reportedly arrested without a warrant between October and December 1990 at Yangon by agents of the DDSI. Mr. Naing Naing was an elected member of the parliament for Pazundaung constituency and member of the NLD. He was reportedly accused of having attended a "secret meeting with nine other NLD candidates" which was held in his house, after which "seven NLD candidates went to Mandalay" for discussion about "matters relating to the formation of a parallel government in Mandalay", and also of having "attended another secret meeting" at which he and a number of other NLD members of parliament "discussed the arrangement to form a government in the jungle on the border". He was reportedly sentenced to 10 years' imprisonment for misprision by the Military Tribunal in Yangon. He was said to be held at Insein Prison.

(d) Khin Maung Thein, an elected member of parliament from Khin Oo-1 constituency and a member of the NLD, was reportedly arrested without a warrant between October and December 1990 at Yangon by DDSI agents. He was reportedly accused of attending a government meeting in late September 1990 at which "formation of a provisional government" was discussed. It was reported that the Military Tribunal sentenced him to 20 years in prison for high treason. He was said to be detained at Insein prison.

(e) Min Zeya (alias Aung Min, alias Aung Par), born in 1958, a final year law student, resident of Kyaukkon Ward, Yankin, Yangon, was reportedly arrested at his home without a warrant on 14 August 1989 by DDSI agents. Mr. Min Zeya was the Chairman of the All Burma Federation of Students Union (ABFSU) - (Ma-Ka-Tha). After having delivered a speech in March 1988 the Government reportedly arrested him several times during that year. Each time he was allegedly interrogated and severely tortured by the military intelligence, without being ever formally charged or tried. After his arrest he was reportedly first held in a military intelligence detention centre, Yae Kyi Aie, in Yangon, where he was allegedly badly tortured by DDSI agents. Mr. Min Zeya was reportedly accused of having contacts with student groups on the border and soliciting money from foreign embassies. The Military Tribunal in Insein Prison reportedly sentenced him to eight years' imprisonment with hard labour. He was reportedly detained at Insein Prison where he was said to be held in a solitary confinement cell.

(f) Ye Htoon, born in 1937, lawyer, resident of Bo Teza Ward, Yangon, was reportedly arrested at his home without a warrant on 31 July 1989 by DDSI agents. Mr. Ye Htoon took part in the 1988 uprising. After the military coup in 1988, he worked closely with the student groups. After his arrest he was reportedly first taken to the military intelligence headquarters, Yae Kyi Aie, in Yangon, where he was allegedly tortured; later he was sent to Insein Prison in Yangon where he was said to be detained. According to the source Ye Htoon was accused of involvement in the student movement in 1988 and of serving as a liaison for a foreign embassy that channelled money to that movement; he was also accused of relaying "false information" about developments in Burma to the Voice of America, the BBC and to the Bangkok-based journalist Bertil Lintner. He was reportedly sentenced to nine years' imprisonment with hard labour by the Military Tribunal in Insein Prison, Yangon.

(g) Myo Myint Nyein, aged 38, a student leader, and Sein Hlaing, aged 35, a leader of the Thon Yaung Chai's organization, residents of Pazundaung Township and Sangyoung Township, Yangon, respectively, were reportedly arrested without a warrant at Yangon on 12 September 1990 and 9 September 1990, respectively, by DDSI agents. According to the source, a Government newspaper reported that Myo Myint Nyein asked a certain Nyan Paw (reportedly a friend of his) to write satirical poems and then handed them over to Sein Hlaing "to publish and distribute them so as to organize the student youths to cause instability in Yangon". Both were reportedly sentenced on 15 November 1990 to 7 years imprisonment by the Military Tribunal in Yangon, under the 1950 Emergency Provisions Act (5 J) for attempting to "create misunderstanding" between the people and the Defence Services. It was reported that they were sent to Insein prison after their arrest, but that their present place of detention was not known.

(h) The Government of Myanmar, which gives different sentences from those indicated by the source in the case of some detainees, states that none of these persons was detained arbitrarily. After perfectly legal actions and after a proper trial, they were sentenced for having broken the law. They had in fact incited acts of violence with the aim of causing disturbances throughout the country. They also contacted insurgent organizations and obtained weapons and financial assistance from a foreign embassy, which constitutes an offence.

6. As the Working Group has already had occasion to note in its decision No. 52/1992 relating to the communication concerning Nay Min - following the preliminary report of the Special Rapporteur (A/47/651) - the legislative provisions most frequently cited in connection with the prosecution of Members of Parliament, political leaders, writers, Buddhist monks, etc., are section 10 (a) of the State Protection Law of 1950 and section 5 (J) of the Emergency Provisions Act of 1950, which also confer competence on the military courts. The persons cited in the communication, who are either elected Members of Parliament or writers, journalists or student leaders, are no exception since the same legislative provisions as those referred to above, and in particular section 5 (J) of the Emergency Provisions Act, were invoked against them. The Working Group is thus convinced that, as in the communication concerning Nay Min v. the Government of Myanmar, what is in fact held against these persons is that they have contested the political regime in power in their country. And there are no reports that in so doing they engaged in violence or incited violence. It is therefore apparent that they were detained solely for having freely and peacefully exercised their right to freedom of opinion and expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights.

7. In the light of the above the Working Group decides:

(a) The detention of Win Tin, Tin Htut, Naing Naing, Khin Maung Thein, Min Zeya, Ye Htoon, Myo Myint Nyein and Sein Hlaing, is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged torture and ill-treatment to the Special Rapporteur on the question of torture.

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Myanmar to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1993

DECISION No. 39/1993 (NIGER)

Communication addressed to the Government of the Republic of the Niger on 22 February 1993.

Concerning: Mohamed Moussa, Akoli Daouel, Moktar el Incha, Alhassane Dogo, Elias el Mahadi, Alhadji Kane, and Rabdouane Mohamed, on the one hand, and the Republic of the Niger, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiry of more than ninety (90) days since the transmittal of the cases, the Working Group is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Niger. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases in question, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. It is reported in the communication from the source that about 100 persons of Tuareg origin, including a number of children, were arrested in Niger from 27 to 31 August 1992 and are held in detention in an unknown place, without charge or trial, apparently because of their ties with the Tuareg rebel movement. The detainees are said to include the following persons: Mohamed Moussa, Minister of Transport, Commerce and Tourism (arrested in Niamey on 30 August 1992); Akoli Daouel, founder and leader of the Union for Democracy and Social Progress (UDPS); Moktar el Incha, Prefect, Governor, head of the local administration, Agadez; Alhassane Dogo, Provincial Deputy-Prefect, assistant head of the local administration, Arlit; Elias el Mahadi, captain in the armed forces; Alhadji Kane, Director of the Office of Tourism, Agadez, and a member of the UDPS; and Rabdouane Mohamed, a teacher. The arrests were reportedly made by members of the armed forces after a police inspector was killed on 26 August 1992 by a group of armed men suspected by the authorities of belonging to the Tuareg rebel movement. According to the source, the arrests were made without a warrant or any other judicial authorization. The army demanded the release of 30 hostages, including 14 members of Republican Guard and 8 gendarmes, held in captivity by the Aïr and Azaough Liberation Front (FLAA), a Tuareg rebel movement, since February 1992; according to the source, however, the persons arrested by the

armed forces from 27 to 31 August 1992 have no ties with the FLAA and are being held simply because they belong to the Tuareg ethnic group or are members of the UDPS opposition political group.

6. It is apparent from the facts as described above that Mohamed Moussa, Akoli Daouel, Moktar el Incha, Alhassane Dogo, Elias el Mahadi, Alhadji Kane and Rabdouane Mohamed have been detained solely because they belong to the Tuareg ethnic group or because they belong to the UDPS opposition political party.

7. In the light of the above, the Working Group decides:

The detention of Mohamed Moussa, Akoli Daouel, Moktar el Incha, Alhassane Dogo, Elias el Mahadi, Alhadji Kane and Rabdouane Mohamed is declared to be arbitrary, being in contravention of articles 7, 9, 19 and 20 of the Universal Declaration of Human Rights and articles 2, 9 and 19 of the International Covenant on Civil and Political Rights, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the Republic of the Niger to take the necessary steps to remedy the situation in order to bring it in conformity with the principles and provisions incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1993

DECISION No. 40/1993 (DJIBOUTI)

Communication addressed to the Government of the Republic of Djibouti on 22 February 1993.

Concerning: Ali Aref Bourhan (and 13 other persons whose names are not communicated), on the one hand, and the Republic of Djibouti, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government in respect of the case in question. With the expiry of more than ninety (90) days since the transmittal of its letter, the Working Group is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3 (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Djibouti. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. It is reported in the communication from the source that Ali Aref Bourhan, 58 years of age, former President of the Council, was arrested in Djibouti in January 1991 with about 130 other persons, all members of the Afar ethnic group (which is known to oppose the Government). Most of them were released, but Ali Aref Bourhan and 10 other persons were held in detention and charged with subversion and other crimes that carry the death penalty. In July 1992, the Security Tribunal of the Republic, declared Ali Aref Bourhan and 13 other accused persons, including four who had been provisionally released, guilty of plotting to overthrow the Government of President Hassan Guled Aptidon and sentenced them to five to 10 years' imprisonment, sentences now being served in the Gabode prison in Djibouti. According to the source, the trial (attended as an observer by Mr. Diabaura Maroufa, former President of the Mauritanian Bar Association) was vitiated by serious violations of internationally recognized standards relating to the right to a fair hearing. This was for the following reasons:

The majority of the judges at the trial consisted of government officials, contrary to the requirement in article 14 of the International Covenant on Civil and Political Rights that the tribunal should be independent;

The court refused to examine allegations that the accused's confessions had been extracted under torture. This was refused, despite the fact that doctors appeared in court and testified that the accused persons had been tortured. Moreover, physical evidence of the torture was shown to the court. The judges none the less declared that the statements made by the accused in the course of the questioning were admissible. The court did not summon the persons said to be responsible for torturing the accused and confined itself to the statement by the Prosecutor that torture has never been practised in Djibouti.

6. It is apparent from the facts as described above that the trial of Ali Aref Bourhan and 13 other persons by the Security Tribunal of the Republic contravened internationally recognized standards relating to the right to a fair hearing and that non-observance of those provisions is such that it confers on the deprivation of freedom of the above-mentioned persons an arbitrary character.

7. In the light of the above, the Working Group decides the following:

(a) The detention of Ali Aref Bourhan and 13 other persons is declared to be arbitrary, being in contravention of articles 5, 9 and 10 of the Universal Declaration of Human Rights and articles 7, 9 and 14, paragraphs 1, 2, 3 (d) and (e), of the International Covenant on Civil and Political Rights, and falls within category III of the principles applicable in the consideration of the cases submitted to the group;

(b) The Working Group further decides to transmit the information concerning allegations of torture to the Special Rapporteur on the question of torture.

8. Consequent upon the decision declaring the detention of Ali Aref Bourhan and the 13 other persons to be arbitrary, the Working Group requests the Government of the Republic of Djibouti to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles contained in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1993

DECISION No. 41/1993 (MOROCCO)

Communication addressed to the Government of the Kingdom of Morocco on 22 February 1993.

Concerning: Abdesalam Yassin, on the one hand, and the Kingdom of Morocco, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question, within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Morocco. The Working Group transmitted the Government's reply to the party making the allegations, which has provided the Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case in question, taking into consideration the allegations made and the Government's reply, as well as the comments by the source.

5. It emerges from the communication from the source that Abdesalam Yassin, the founder and spiritual guide of the "al-Adl 'al-Ihsan" (Justice and Charity) Islamic association has been under house arrest since January 1990, without being charged. According to the source, many members of the association were arrested by the police between October 1989 and March 1990; some were charged with establishing an illegal organization and were convicted; others were released after questioning. On 13 January 1990, five members of the association's board of directors were arrested in front of Abdesalam Yassin's home in the town of Sale and were tried in May 1990 and sentenced to two years' imprisonment. Abdesalam Yassin was placed under house arrest, apparently as a result of an administrative decision and, whereas the five members of the board of directors have served their sentence and are now free, Yassin is still under house arrest. His wife is the only person allowed to stay with him; his daughter is not allowed to visit him. In July 1992 three lawyers laid a complaint against the Minister of the Interior, the Director of National Security and the Governor of Sale, challenging the legality of Abdesalam Yassin's detention, but according to the source the courts have not up to now taken any steps in connection with the case. The source explains that the "al-Adl 'al-Ihsan" association has been authorized as an Islamic charity organization but not as a political party. The source adds that Abdesalam Yassin said in 1989 that the association was opposed to violence of any kind and that its aim was to obtain power by the consent of

the people. The source considers that Abdesalam Yassin was placed under house arrest for exercising the right to freedom of conscience and religion, without resorting to violence.

6. In its reply, the Government of Morocco points out that the "Al-Adl 'al-Ihsan" Association of which Abdesalam Yassin is the founder and guide, tried to engage in activities centred solely on Islam, in contravention of its statutes, as deposited with the courts and the local authorities and under the terms of which the Association should engage solely in public activities of a general character. Such a practice is, according to the Government, a threat to public order; since Islam is, under the Moroccan Constitution, the religion of the State, it does not lie with any group to turn Islam into its ideology.

7. As to the violation of the freedom of opinion and expression reported by the source, which maintains that, in his capacity as a member of an association, Abdesalam Yassin was doing no more than exercising that right peacefully, the Working Group considers that it is insufficiently informed of the nature of the association's activities and its objectives to decide on that point.

8. On the other hand, it considers that it is in a position to evaluate the legal conditions of Abdesalam Yassin's detention. It emphasizes that, paradoxically, while the conditions under which the five other members of the association were arrested, tried and then released after serving sentence seem, inasmuch as the source does not raise this question, to be in conformity with the provisions concerning the right to a fair hearing, but this does not apply to the house arrest of Abdesalam Yassin:

(a) First, with reference to its Deliberation 01, the Working Group takes the view that the conditions of this house arrest can be likened to detention in that it is carried out "in closed premises which the person is not allowed to leave" (E/CN.4/1993/24, para. 20);

(b) Second, this deprivation of freedom, which is purely an administrative matter ordered by the Executive, is a measure that has been taken without regard for all or part of the guarantees of the right of the person concerned to have his case heard in accordance with the terms of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights. This measure involves non-observance of all or part of the international provisions relating to the right to a fair trial such that it confers on the deprivation of freedom an arbitrary character.

9. In the light of the above, the Working Group decides the following:

> Abdesalam Yassin's house arrest can be likened to detention and, as such, is declared to be arbitrary, being in contravention of articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights,

to which the Kingdom of Morocco is a party, and falls within category III of the principles applicable in the consideration of the cases submitted to the Group.

10. Consequent upon its decision declaring the detention of Abdesalam Yassin to be arbitrary, the Working Group requests the Government of the Kingdom of Morocco to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1993

DECISION NO. 42/1993 (PERU)

Communication addressed to the Government of Peru on 29 March 1993.

Concerning: Miguel Fernando Ruiz-Conejo Márquez, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government of the Republic of Peru in respect of the case in question. With the expiry of more than ninety (90) days since the transmittal of its letter, the Working Group is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Peru. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the allegations, Miguel Fernando Ruiz-Conejo Márquez, an agronomist, was arrested by officials of the Anti-Terrorist Department (DINCOTE) on 12 September 1992 at the home of a friend in Lima. He was held by DINCOTE for two weeks, after which there was no news of him for 10 days. Only on 5 October was it learnt that the Navy Court refrained from continuing the proceedings and transferred them to the Court of the Army IIIrd Judicial Zone at Arequipa. On 6 October the family was notified that the accused's statement would be taken on 4 October, in other words, two days previously, in the city of Puno. In this way, the accused's statement was made without the presence of counsel, which is required by law. On 7 October, Ruiz-Conejo was sentenced to rigorous imprisonment for life as a member of Shining Path; at the trial, he had no legal assistance and no opportunity to present evidence in his own favour. On 8 October, still in 1992, and in Arequipa, the lawyer had the opportunity to see the file. However, on 9 October, the higher court, the Military Court, heard the appeal by Ruiz-Conejo against the sentence by the military examining magistrate in Puno. In view of these facts, the defence counsel filed an application to vacate judgement with the Supreme Council of Military Justice. The application was filed on 10 October. On 12 October the Council notified the defence counsel that he would be heard on the following day and would be able "to speak for 15 minutes, to report orally on the Isla de San Lorenzo". The Council heard the plea and altered the conviction of life imprisonment to 30 years' imprisonment;

(b) The Government has not answered the report requested by a letter dated 29 March, for which reason the Working Group is in a position, in accordance with its methods of work, to decide whether or not the deprivation of freedom is of an arbitrary character;

(c) The complaint also questions the grounds for the convictions by both the military examining magistrate in Puno, by the Court Martial and by the Supreme Council of Military Justice in Lima, contending that the charge of belonging to the Shining Path terrorist group is inoperative, and recognizing only a long-standing friendship with a member of that group, Carlos Incháustegui, an architect;

(d) The Working Group will not consider the merits of the accusation, since the question of whether or not the charges are operative is a matter that falls outside its mandate;

(e) From the description in subparagraph (a) above, which has not been challenged by the Government, it seems quite obvious that, in the circumstances, violations have occurred of the following principles applicable in the consideration of the cases submitted to the Working Group, which are set out in annex I to document E/CN.4/1992/20 and which were approved in Commission on Human Rights resolutions 1992/28 and 1993/36:

(i) Denial of the right to be assisted by counsel (principles 11 (1) and 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment);

(ii) Inability to notify the family promptly of the transfer from the place of detention (principle 16);

(iii) Refusal of the right to communicate with counsel and to consult him without delay or censorship (principle 18);

(iv) Trial by a tribunal that is not competent, since he is a civilian, accused not of treason - for which civilians can be tried under the terms of Decree-Law No. 25,659 - but a different offence, namely belonging to a terrorist group (art. 14, para. 1, of the International Covenant on Civil and Political Rights);

(v) Denial of the right to adequate time and facilities to communicate with counsel and to prepare the defence (art. 14, para. 3 (b), of the Covenant);

(vi) Denial of the right to be defended by counsel of his own choosing (art. 14, para. 3 (d), of the Covenant);

(vii) Denial of the right to examine witnesses against him and present witnesses on his own behalf (art. 14, para. 3 (e), of the Covenant).

6. In the light of the above, the Working Group decides the following:

> The detention of Miguel Fernando Ruiz-Conejo Márquez is declared to be arbitrary, being in contravention of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, to which the Republic of Peru is a party, and it falls in category III of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon its decision declaring the detention of the above-mentioned person to be arbitrary, the Working Group requests the Government of Peru to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1993

DECISION No. 45/1993 (SUDAN)

Communication addressed to the Government of the Sudan on 29 April 1993.

Concerning: Mohamed Wahaba, Mohamed Bashir al-Faki, Salah Hassan Said, Abdel Hamid Ali Bashis, Abdul Ra'ouf Ali Abu Na'ouf, Omar Ali (1), Farouk Ali Zakaria, Omar Ali (2) and Abdul Rahman Abdulla Salin Tout, on the one hand, and the Republic of the Sudan, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Sudan. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. It was alleged in the communication from the source, a summary of which was transmitted to the Government, that: Mohamed Wahaba, a former civil servant, Mohamed Bashir al-Faki, a teacher, Salah Hassan Said, a manager in private sector, Abdel Hamid Ali Bashis, a politician, Abdul Ra'ouf Ali Abu Na'ouf, a former civil servant, Omar Ali, a teacher, Farouk Ali Zakaria, Omar Ali (not the same as mentioned above) and Mohamed Bashis were reportedly arrested in Burri, Khartoum, between 21 and 27 December 1992, held incommunicado, without charge or trial and were said to be still in detention. A tenth man, Abdul Rahman Abdulla Salin Tout, a businessman, was reportedly arrested on 5 January 1993. All of them were reportedly members of the banned Sudan Communist Party. Their place of detention was unknown, but they were presumed to be held either in the security headquarters in Khartoum or in one of the detention centres run by the security service in Sudan. The detention of these persons, presumably suspected of being part of an underground network of communist activists, was alleged to violate their rights to freedom of expression and freedom of association.

6. It appears from the facts as described above that the detention of the 10 above-mentioned persons is due solely to the fact that they have freely exercised their right to freedom of opinion and expression, a right which is guaranteed by article 19 of the Universal Declaration of Human Rights and by

article 19 of the International Covenant on Civil and Political Rights, and their right to freedom of association, guaranteed by article 20 of the Universal Declaration of Human Rights and by article 22 of the International Covenant on Civil and Political Rights. Furthermore, there is no record that, in doing so, they used violence or in any way threatened national security, public order, or public health or morals, or that they failed to respect the rights, freedoms or reputations of others, as provided for by article 29 (2) of the Universal Declaration of Human Rights and by articles 19 (3), 21 and 22 (2) of the International Covenant on Civil and Political Rights.

7. In the light of the above the Working Group decides:

> The detention of Mohamed Wahaba, Mohamed Bashir al-Faki, Salah Hassan Said, Abdel Hamid Ali Bashis, Abdul Ra'ouf Ali Abu Na'ouf, Omar Ali (1), Farouk Ali Zakaria, Omar Ali (2) and Abdul Rahman Abdulla Salin Tout, is declared to be arbitrary being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 19 and 22 of the International Covenant on Civil and Political Rights, to which the Republic of the Sudan is a party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the Sudan to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 September 1993

DECISION NO. 48/1993 (UNITED STATES OF AMERICA)

Communication addressed to the Government of the United States of America on 6 November 1992.

Concerning: Humberto Alvarez Machaín, on the one hand, and the United States of America, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (see the report of the Working Group, E/CN.4/1992/20 and E/CN.4/1993/24) and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred in the country in question.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question, received with slight delay - 9 February 1993 - in terms of 90 days period from the date of transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 43/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the United States of America. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. The Working Group considers that:

(a) Regarding the facts, there are no substantial differences - which will in any case be pointed out - between the complainant's version and the version supplied by the Government. Accordingly, the Group holds it true that Dr. Humberto Alvarez Machaín, a doctor of Mexican nationality living in Mexico, was abducted (the expression used by the United States Government and in the ruling of the United States Supreme Court) on 2 April 1990 (the complaint says 7 April), at his medical office in Guadalajara, Mexico, and forcibly taken to the United States). According to the complainant, the persons who seized him were "paid agents of the DEA" (Drug Enforcement Administration, a United States Government agency to investigate and suppress drug trafficking). The Government does not say who the persons were, but on the basis of the decisions of the United States courts which heard the case, reports that "DEA agents were responsible for Dr. Alvarez Machaín's abduction, although they were not personally involved in it". According to the complaint, after being held incommunicado for over 20 hours and being physically and psychologically abused - something the Government denies - he was taken by private plane to the border town of El Paso, Texas, where he was arrested by DEA officials.

(b) Nor is there any controversy about the grounds invoked for the deprivation of freedom: on 31 January 1990 a United States Federal Grand Jury charged Dr. Alvarez Machaín with taking part in the kidnapping and murder of

DEA Special Agent Enrique Camarena Salazar in Mexico. Alvarez Machaín is said to have administered drugs to Camarena to facilitate his continued torture and interrogation. In the opinion of the Grand Jury, these acts constitute the crimes of murder, conspiracy to commit and committing violent acts in furtherance of an enterprise engaged in racketeering; conspiracy to kidnap a federal agent and aiding and abetting the kidnapping of a federal agent, all of which crimes are covered by United States federal laws.

(c) When he was brought before the court - the District Court for the Central District of California (Los Angeles) - to try him on these charges, Alvarez Machaín said that his abduction had constituted "outrageous government conduct" - an allegation which the District Court rejected - and that the abduction had been a violation of the 1978 Extradition Treaty between the United States of America and the United States of Mexico. This allegation was admitted by the Court, which therefore ordered Alvarez Machaín's release. The Government of the United States appealed to the Ninth Circuit Court of Appeals, which agreed with the District Court's findings and ordered Alvarez Machaín's repatriation to Mexico.

(d) The Government took the matter to the Supreme Court, which, on 15 June 1992, reversed the decisions of the lower courts and held that "forcible abduction does not prohibit ... trial in a United States court for violation of criminal law".

This ruling was adopted by a majority of six judges, with three dissenting opinions.

(e) Accordingly, Dr. Alvarez Machaín was tried on the charges mentioned in paragraph (b) above. The trial began in October 1992 and he was acquitted on all counts on 14 December 1992 and released to be returned to Mexico; repatriation was confirmed by the complainant in a communication dated 3 February 1993.

(f) In keeping with the methods of work adopted by the Group, cases are filed when the person has been released after the Working Group has taken up the case. "Nevertheless, the Working Group reserves the right to decide, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned" (E/CN.4/1993/24, annex IV, para. 14).

(g) In view of the importance of the question of principles presented by this case, the Working Group deems it advisable to declare whether or not the deprivation of freedom of Alvarez Machaín from 8 April 1990 to 14 December 1992, i.e. for 987 days, was arbitrary.

(h) To determine whether or not the deprivation of freedom is arbitrary, the Working Group must basically weigh up the following issues:

(1) Whether international treaty law governing relations between the United States of America and Mexico permits or prohibits the abduction of one person from the territory of one country to the territory of another, in order for him to be tried;

(2) If the matter is not resolved in treaty law, whether customary international law permits or prohibits abduction of this kind.

It should however be noted that those two issues arise only in the context of acts of abduction of persons accused of common crimes and not when such acts are committed against persons accused of crimes against humanity, as accepted by the international community.

(i) In determining the first issue, the Working Group has to bear in mind the terms of article 31 of the 1969 Vienna Convention on the Law of Treaties, which states that "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

(j) A treaty is "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation". (Vienna Convention, art. 2, para. 1 (a).)

(k) In the absence of a treaty definition of extradition, in keeping with the principal writers on criminal law (Francesco Antolisei, Manual de Derecho Penal, p. 102; Luis Jiménez de Asúa, Tratado de Derecho Penal, vol. II, p. 894; Eugenio Cuello Calón, Derecho Penal, vol. I, p. 225; Giuseppe Maggiore, Derecho Penal, vol. I, p. 236), it may be defined as an act of international punitive cooperation consisting in the surrender by one State to another of an accused or convicted person who is on its territory, to be tried or to carry out a sentence imposed on him.

(l) Accordingly, an extradition treaty is an international agreement concluded between States in written form and governed by international law, in which those States undertake to surrender to one another, in accordance with the rules agreed on, individuals sought for an offence or subject to investigation, for the purposes of carrying out a sentence or an arrest warrant issued by the judicial authorities of the requesting party. This is apparent from article 1 of the European Convention on Extradition, signed at Paris on 13 December 1957, article 344 of the Convention on Private International Law and article 1 of the 1933 Montevideo Convention on Extradition.

(m) The object and purpose of an extradition treaty, consequently, is to regulate the means whereby the States concerned can request and contribute to international cooperation in trying offences committed by individuals who are on the territory of another Power, by surrendering them to the State Party that has been harmed. The "surrender" of the offenders, in other words, placing them in the hands of another State, is the key function of this institution.

This is rightly set out in the Extradition Treaty between Mexico and the United States, when the treaty establishes that it will make it possible to cooperate more closely in the struggle against crime and, to that end, mutually improve assistance in extradition matters (preamble). For this purpose, it describes the obligations both of the requesting party and the requested party, the principal obligation being to surrender the persons requested; evidence is described (arts. 3, 7, 10, 12 and 13), with an enumeration of extraditable offences, leaving all other offences as non-extraditable (annex). This is Mexico's interpretation, as already pointed out.

(n) Consequently, it may be maintained that the Extradition Treaty does not explicitly prohibit abduction, just as it does not prohibit someone being held under an extradition application from being tortured or executed by the requested country. However, it is obvious that this is implicitly prohibited when the subject matter - cooperation in the struggle against crime by surrendering offenders - is regulated in all dimensions by the treaty in question.

Abduction is the opposite of surrender, for the basic element of the former is the unilateral wish of what should be the requesting party, whereas the basic element of the latter is the decision of the requested party.

It may therefore be inferred that the object and purpose of the Treaty, and an analysis of the context, lead to the unquestionable conclusion that abduction for the purpose of bringing someone in Mexico or in the United States before a court of the requesting party is a breach of the 1978 Treaty.

(o) Furthermore, both Mexico and the United States are also parties to the Convention on Extradition, adopted at the Seventh International Conference of American States, on 26 December 1933, which also stipulates that "Each one of the signatory States in harmony with the stipulations of the present Convention assumes the obligation of surrendering to any one of the States which may make the requisition, the persons who may be in their territory and who are accused or under sentence", provided certain circumstances are fulfilled. This, like all the conventions on the subject, is a comprehensive legal text which regulates the grounds and the procedures for surrendering wanted persons and it details cases in which extradition can be denied. Obviously, abduction is prohibited.

The deprivation of freedom, as a consequence of the arrest, is therefore arbitrary.

(p) The foregoing conclusion makes it pointless to analyse the second issue mentioned in paragraph (h) of this decision. Nevertheless, the importance of the matter is such that it needs to be resolved.

Of course, customary international law, as abundantly shown by the International Human Rights Law Group in its submission to the Inter-American Juridical Committee - an organ of the Organization of American States, is unquestionably part of the internal law of the United States of America and, therefore, application of such law is compulsory for all the courts in that country.

Another basic principle of international law and of international relations is respect for the territorial sovereignty of States, a principle which, in addition to prohibiting the use of force and intervention by one State in the affairs of another - includes refraining from committing acts of sovereignty in the territory of another State, particularly acts of coercion or judicial investigation. In 1949 the International Court of Justice declared unlawful "Operaion Retail", in which British naval vessels were seeking evidence in Albanian territorial waters in the Corfu Channel to demonstrate the guilt of the Government of Albania in laying mines hit by British vessels with loss of life and material damage. "Between independent States, respect for territorial sovereignty is an essential foundation of international relations", said the Court. In the Lotus case (1927) the Permanent Court of International Justice held that a State "may not exercise its power in any form in the territory of another State". What is more, intervention by one Power in the territory of another is not only a breach of international law but, in addition, if it is repeated, it may "endanger international peace and security" (United Nations Security Council, Claim by Argentina in the Eichmann case, resolution 138 (1960)).

Accordingly, with all the more reason it must be inferred that the deprivation of the freedom of Humberto Alvarez Machaín is not justified in customary international law.

(q) There are further considerations. First, the United States never tried to request the extradition of Alvarez Machaín or of any of the other participants. In the case of Rafael Caro Quinteros, also abducted, the District Court held that his abduction prevented him from being tried in the United States, and this was confirmed by the Court of Appeals and enforced. The same happened in the case of René Martín Verdugo-Urquidez.

In these two cases, the offenders were returned to the United States.

Nor did the United States have grounds for doubting the courts in Mexico. Indeed, everything indicates that Mexico scrupulously tried, in its courts, the persons responsible for the death of DEA agent Enrique Camarena and the Mexican pilot working with him, Alfredo Zavala Avelar, who also died. Rafael Caro Quinteros was sentenced on these counts to 40 years' imprisonment.

(r) In the case of Alvarez Machaín, no legal basis whatsoever can be found to justify the deprivation of freedom from the date of the abduction - 2 April 1990 - until his release on 14 December 1992 since this deprivation of freedom took place without the orders of any authority whatsoever and, indeed, both the District Court and the Court of Appeals declared it unlawful. In the circumstances, the deprivation of freedom is a breach of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Accordingly, the detention is arbitrary, falling within cateogry I of the principles applicable in the consideration of the cases submitted to the Working Group.

6. In the light of the above, the Working Group decides:

The detention of Humberto Alvarez Machaín is declared to be arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights and principle 2 of the Body of Principles adopted by the General Assembly in resolution 43/173, and falling within category I of the principles applicable in the consideration of cases submitted to the Working Group.

7. As a consequence of its decision to declare arbitrary the detention of the person in question, and in view of the fact that Dr. Humberto Alvarez Machaín has been released, the Working Group requests the Government of the United States of America to take the necessary steps to remedy the situation, in accordance with the provisions and principles embodied in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 September 1993

DECISION No. 49/1993 (ZAMBIA)

Communication addressed to the Government of Zambia on 30 April 1993.

Concerning: Bweendo Mulengela, Bonnie Tembo, Peter Lishika, Christopher Muyoka, Wezi Kaunda, Cuthbert Nguni, Henry Kamima, Panji Kaunda, Wilfred Wanani as well as Steven Moyo, Rabson Chongo, Stan Mutanga, McPherson Mbulo, William Banda, Rupiya Banda, Sianda Ilukena, on the one hand, and the Republic of Zambia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Zambia. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The communication contains the following allegations:

(a) The first seven persons mentioned above, all members of the United National Independence Party (UNIP), were arrested between 5 and 7 March 1993;

(b) Panji Kaunda, the eldest son of former President Kenneth Kaunda, was arrested on 14 March 1993 and held in police custody at Chipata, in Eastern Province, and Wilfred Wanani, UNIP chairman for local government and housing, was arrested on 18 March;

(c) All the persons mentioned in the present communication were accused of plotting with the aim of "making the country ungovernable through an orchestrated campaign of civil disobedience";

(d) They were subsequently held, without formal charge or trial, in various police stations around the country, where they were interrogated by military personnel;

(e) In the course of these interrogation sessions, two of them, Cuthbert Nguni and Henry Kamima, were ill-treated on several occasions;

(f) The detainees may be presumed to be held under the so-called Preservation of Public Security Regulations, which provide for indefinite administrative detention without charge or trial. These regulations became applicable following the declaration of a state of emergency on 4 and 8 March 1993, and its ratification by Parliament on 12 March. According to the source, the Zambian Constitution contains several provisions guaranteeing the right of detainees to have their detention reviewed, but in fact it is the President who makes the final decision to detain a person for reasons of preserving public security. The courts cannot challenge that decision or question the criteria on the basis of which the decision was taken. Theoretically, the persons concerned may also challenge their detention by filing habeas corpus applications, but in practice they thereby run the risk of remaining in detention for a long period - up to four years - before a ruling is given on their application. It should be noted that, according to the source, Steven Moyo, Rabson Chongo, Stan Mutanga, McPherson Mbulo, William Banda, Rupiya Banda and Sianda Ilukena have been released.

6. It is apparent from the facts as set out above that the persons concerned by the above-mentioned measures have or had been detained since February/March 1993 without charge or trial, by virtue of a purely administrative measure which is in fact within the sole and exclusive competence of the Executive, in the person of the President, and without ever having had the possibility of challenging the legality of their detention in a court or exercising a judicial remedy. The observed absence of the most elementary guarantees of the right to a fair trial, as established by the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Zambia is a party, is so serious that it confers an arbitrary character on the detention measures.

7. As to the violation of the right to freedom of opinion and expression reported by the source, which considers that as members of a political party (UNIP) the persons concerned were simply exercising that right in a peaceful manner, the Working Group considers that it has received insufficient information on the instigators, objectives and characteristics of the civil disobedience campaign which, according to the source, lay at the origin of their detention.

8. In the light of the above the Working Group decides:

(a) The detention of Bweendo Mulengela, Bonnie Tembo, Peter Lishika, Christopher Muyoka, Wezi Kaunda, Cuthbert Nguni, Henry Kamima, Panji Kaunda and Wilfred Wanani is declared to be arbitrary being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the Republic of Zambia is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) Since the Working Group was informed of the release of Steven Moyo, Rabson Chongo, Stan Mutanga, McPherson Mbulo, William Banda, Rupiya Banda and Sianda Ilukena, and since it is of the opinion that no special circumstances warrant it to consider the nature of the detention of the persons released, the Working Group, without prejudging the nature of the detention, decides to file the cases of the above-mentioned persons in terms of paragraph 14 (a) of its methods of work.

9. Consequent upon the decision of the Working Group declaring the detention of Bweendo Mulengela, Bonnie Tembo, Peter Lishika, Christopher Muyoka, Wezi Kaunda, Cuthbert Nguni, Henry Kamima, Panji Kaunda and Wilfred Wanani to be arbitrary, the Working Group requests the Government of Zambia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 September 1993

DECISION No. 50/1993 (PERU)

Communication addressed to the Government of Peru on 29 March 1993.

Concerning: José Gabriel Pastor Vives, Jaime Salinas Sedo, Manuel Fernando Obando Salas, Víctor Ernesto Obando Salas, Luis Armando Soriano Morgan, Marco Antonio Zarate Rotta, Enrique Aguilar del Alcazar, Arturo Moreno Alcántara, Jorge Ramón Noblecilla Merino, César Gustavo Martínez Uribe-Restrepo, César Alberto Cáceres Naro, Hugo Isaías Ormero Huapaya and Salvador Carmona Bernasconi, on the one hand, and the Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred in the country in question.

2. The Working Group notes with concern that to date no information has been forwarded by the Government in respect of the cases in question. With the expiry of ninety (90) days since the transmittal of its letter, the Working Group is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Peru. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers:

(a) That according to the allegation, the persons mentioned above, all of them serving or retired military personnel, were arrested on 13 November 1992 in various parts of the country, accused of taking part in a meeting held on the previous day, at which they discussed ways to restore institutional and democratic order. At the meeting, no agreement whatsoever was reached and any future action was ruled out. The authorities accuse the detainees of having fomented, among other things, the assassination of the President of the Republic. It is added that, on 10 January 1992, the Attorney-General, in the Court Martial Chamber of the Supreme Council of Military Justice, read out the prosecution's request for 15 years' rigorous imprisonment for each of the detainees except Colonel César Martínez Urib-Restrepo, for whom the penalty requested was three years, plus civil compensation from all of the accused persons totalling a sum equivalent to 18 million dollars. It is added that the officers, Zarate, Aguilar, Cáceres and Carmona were physically and mentally ill-treated in order to get them to lay the blame on themselves and on the others. It is contended that they were held incommunicado for 10 or 15 days and longer, without being told of the reason for their arrest, and that false evidence has been used against them;

(b) That the Government of Peru has not cooperated with the Working Group in supplying the information requested of it;

(c) That the facts alleged by the Government, according to the account by the actual complainants, have not been challenged - except in one case - in the complaint. The accompanying documents show that a meeting was arranged for 12 December and did take place, but no agreement was reached to carry out a plan to replace the present Government. The detainees merely deny that their purposes included the killing of the President of the Republic;

(d) That planning armed conspiracy cannot be regarded as legitimate exercise of the right to freedom of association, expression or opinion or participation in political life, and that it constitutes an offence in all legislations and political systems. Accordingly, the detention cannot be considered arbitrary under category II of the principles applicable by the Working Group in the consideration of cases submitted to it, which principles are set out in paragraph 3 of this decision;

(e) That contraventions of the rules of due process, such as holding persons incommunicado for periods of up to more than 15 days, not specifying the reasons for their detention, or inability to communicate with counsel during that period constitute violations of the rules of due process of law and that such contraventions make the deprivation of freedom, during the first 15 days, arbitrary;

(f) That the allegations of torture must be transmitted to the Special Rapporteur of the Commission on Human Rights on the question of torture.

6. In the light of the above, the Working Group decides:

(a) The detention of José Gabriel Pastor Vives, Jaime Salinas Sedo, Manuel Fernando Obando Salas, Víctor Ernesto Obando Salas, Luis Armando Soriano Morgan, Marco Antonio Zarate Rotta, Enrique Aguilar del Alcazar, Arturo Moreno Alcántara, Jorge Ramón Noblecilla Merino, César Gustavo Martínez Uribe-Restrepo, César Alberto Cáceres Naro, Hugo Isaías Ormero Huapaya and Salvador Carmona Bernasconi, during the first 15 days is arbitrary and falls within category III of the principles applicable in the consideration of the cases submitted to the Working Group. As to detention since that date, the Working Group does not have sufficient information from the Government or from the source to decide whether or not the detention is arbitrary;

(b) The Working Group also decides to transmit the information on the presumed ill-treatment to the Special Rapporteur on the question of torture.

Adopted on 30 September 1993

Annex III

DECISION ON CASES OF REPORTEDLY RELEASED DETAINEES AND LIST OF SUCH PERSONS

In the course of its consideration of some of the cases of alleged arbitrary detention which it transmitted to Governments, the Working Group was informed, either by the Government concerned or by the source of the allegation, and in some cases by both, that the person(s) concerned was(were) no longer in detention.

Paragraph 14 (a) of its methods of work states that the Working Group, in the light of the information examined during its investigation, shall take one of the following decisions:

> "(a) If the person has been released, for whatever reason, since the Working Group took up the case, the case is filed; nevertheless, the Working Group reserves the right to decide, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned".

The following list contains the cases of persons who are reportedly no longer in detention and regarding whom the Working Group, after having examined the available information, is of the opinion that no special circumstances warrant the Group to consider the nature of their detention. The Working Group, without prejudging the nature of the detention, therefore decides to file their cases, in the terms of paragraph 14 (a) of its methods of work. (The names of the persons listed below are preceded by the number of the decision regarding them, by order of its adoption by the Working Group, and the country concerned.)

Decision No. 6/1993 (Tunisia): Bechir Essid.

Decision No. 7/1993 (Cameroon): John Fru Ndi.

Decision No. 15/1993 (Viet Nam): Nguyen Khac Chinh (see also annex II, Decision No. 15/1993).

Decision No. 19/1993 (Yugoslavia): Sanije Gashi.

Decision No. 29/1993 (Philippines): Pepe Sora.

Decision No. 37/1993 (Saudi Arabia): Naji Jasib al-Tuhaifa.

Decision No. 46/1993 (Viet Nam): Nguyen Si Binh, Du Van Thanh, Nguyen Thanh Cac, Thong Minh Phuoc, Le Hoang Lam, Le Hoang Mai, Ha Hat, Nguyen Van Duoc, Ly Thanh Tong, Nguyen Si Tinh, tran Thi Be San, Lam Thien Thu, Nguyen Si Linh A., Nguyen Si Linh B., Pham Van Thuc, Nguyen Tam and Nguyen H. Can.

Decision No. 47/1993 (Egypt): Abdul Hamid Adil Masah, Thomas Martin, Brian Eckheart, Richard Dugan and Robert Cunningham.

Decision No. 49/1993 (Zambia): Steven Moyo, Rabson Chongo, Stan Mutanga, McPherson Mbulo, William Banda, Rupiya Banda and Sianda Ilukena (see also annex II, Decision No. 49/1993).

Decision No. 56/1993 (Costa Rica): Leonard Charles Zrnic and Jana Lee Whyman Zrnic.

Annex IV

LIST OF PERSONS WHOSE RELEASE WAS NOTIFIED BY THE GOVERNMENTS CONCERNED FOLLOWING THE ADOPTION BY THE WORKING GROUP OF A DECISION CONCERNING THESE PERSONS

(Of the persons who may have been released after the Working Group adopted a decision concerning them, only the release of the following was notified to the Working Group by the Governments concerned.)

Decision No. 4/1992 (Malawi): Martia Machipisa Munthali, Goodluck Mhango (or Dan Mhango).

Decision No. 5/1992 (Sudan): Youssif Hussein Ibrahim.

Decision No. 37/1992 (Sudan): Ahmed Osman Siraj.

Decision No. 45/1992 (Ethiopia): Haile-Gabriel Dagne, Kidane-Mariam Tadesse.

Decision No. 49/1992 (Lao People's Democratic Republic): Patrick Khamphan Pradith (or Khamphanh Padit).

Decision No. 15/1993 (Viet Nam): Do Ngoc Long. With regard to the case of Nguyen Chu, the Government, in its communication dated 3 December 1993, affirms that he has never been arrested or detained.

Decision No. 21/1993 (Morocco): Noubir Amaoui.

Decision No. 22/1993 (Nigeria): Femi Falana.

Decision No. 27/1993 (Philippines): Dioscoro Pendar, Fermin Quiaman.

(Situation at the beginning of November 1993.)

Annex V

STATISTICS

(Covering the period from January to December 1993. The figures given in parentheses are the corresponding figures from last year's report)

I. CASES OF DETENTION IN WHICH THE WORKING GROUP ADOPTED A DECISION REGARDING THEIR ARBITRARY OR NOT ARBITRARY CHARACTER

A. Cases of detention declared arbitrary

		Female	Male	Total
1.	Cases of detention declared arbitrary falling within category I (including 2 cases of persons who were released)	1	5	6 (27)
2.	Cases of detention declared arbitrary falling within category II (including 7 cases of persons who were released)	10	107	117 (32)
3.	Cases of detention declared arbitrary falling within category III (including 5 cases of persons who were released)	-	81	81 (19)
4.	Cases of detention declared arbitrary falling within categories I, II and III	-	1	1 (-)
5.	Cases of detention declared arbitrary falling within categories II and III (including 5 cases of persons who were released, and 1 who died in detention)	2	24	26 (14)
Total number of cases of detention declared arbitrary		13	218	231 (93)

B. Cases of detention declared not arbitrary

	Female	Male	Total
	-	1	1 (1)

II. CASES WHICH THE WORKING GROUP DECIDED TO FILE

	Female	Male	Total
A. Cases filed because of the person's release, in which the Working Group deemed there were no special circumstances requiring it to consider the character of the detention (see annex III)	7	31	38 (107)
B. Cases filed for lack of sufficient information	3	8	11 (18)
Total of cases filed	10	39	49 (125)

III. CASES PENDING

	Female	Male	Total
A. Cases which the Working Group decided to keep pending for further information	-	5	5 (3)
B. Cases transmitted to Governments in which the Working Group has not yet taken any decision	9	45	54 (153)
Total of cases pending	9	50	59 (162)

	Total
Total of cases dealt with by the Working Group during the period January to December 1993	335 (382)
